CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 449

MARICOPA COUNTY, ARIZONA, W. H. LINVILLE, AS COUNTY TREASURER, AND EX-OFFICIO TAX COLLECTOR OF MARICOPA COUNTY, ET AL., PETITIONERS,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 8, 1942.

CERTIORARI GRANTED NOVEMBER 16, 1942.

TRANSCRIPT OF RECORD

Supreme Court of the United States

October Term, 1942

No.....

MARICOPA COUNTY, Arizona, W. H. LINVILLE, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, Arizona, WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona, CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona, THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a corporation,

Respondent.

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10025

United States

Circuit Court of Appeals

For the Ninth Circuit.

MARICOPA COUNTY, Arizona, W. H. LINVILLE, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, Arizona, WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona, CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona, THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Appellants,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a corporation,

Appellee.

Transcript of Record

Upon Appeals from the District Court of the United States for the District of Arizona.

PARKER PRINTING COMPANY, 543 SANSOME STREET, SAN FRANCISCO

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*Page numbering appearing at foot of page of original certified Transcript of Record.

In the United States District Court
for the District of Arizona

October 1935 Term At Phoenix

MINUTE ENTRY OF
WEDNESDAY, OCTOBER 23, 1935
(Phoenix Division)

Honorable F. C. Jacobs,
United States District Judge, presiding

E-333

THE VALLEY NATIONAL BANK OF PHOENIX,

Plaintiff,

vs.

MARICOPA COUNTY, ARIZONA; HARRY M. MOORE, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; C. W. PETERSON, JOHN A. FOOTE and GEO. FRYE, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; DANIEL E. GARVEY, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona; WARREN A. GROSSETTA, R. H. MARTIN, and J. B. MEAD, as Members of and Constituting the Board of Supervisors and County Board

of Equalization of Pima County, Arizona; GRAHAM COUNTY, ARIZONA; CHARLES M. GEITZ, as County Treasurer and Ex-Officio Tax Collector of Graham County, Arizona; ALVIN GOODMAN, as County Assessor of Graham County, Arizona; J. W. GREENHALGH, GLEN HOOPES, and VIRGIL McEUEN, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Graham County, Arizona; MOHAVE COUNTY; C. B. TATUM, as County Treasurer and Ex-Officio Tax Collector of Mohave County, Arizona; W. O. RUGGLES, as County Assessor of Mohave County, Arizona; F. L. HUNT, W. D. LAWE, and E. T. LYONS, as Members of and constituting the Board of Supervisors and County Board of Equalization of Mohave County, Arizona; FRANK LUKE, THAD MOORE, and D. C. O'NEIL, as Members of and Constituting the State Tax Commission and the State Board of Equalization of the State of Arizona,

Defendants. [5]

ORDER SETTING PLAINTIFF'S APPLICATION FOR INTERLOCUTORY INJUNCTION FOR HEARING, AND DIRECTING NOTICE.

The Valley National Bank, of Phoenix, a corporation, the plaintiff in the above entitled cause, having

filed herein its Motion for the issuance of an interlocutory injunction, as prayed for in the verified bill of complaint filed herein,

It Is Hereby Ordered, that said application for interloctuory injunction be and the same hereby is set for hearing at the court room of the United States District Court, for the District of Arizona, at Phoenix, on the 4th day of November, 1935, at the hour of 10:00 o'clock A. M., and that notice of said hearing and the time and place thereof be given to the defendants not less than five (5) days before said hearing, by serving upon each of said defendants a copy of said motion, together with copies of said verified bill of complaint, and a copy of this order.

Dated this 23rd day of October, 1935.

F. C. JACOBS,
Judge of the United States
District Court.

[6]

[Title of District Court and Cause—E-333]

MINUTE ENTRY OF MONDAY, NOVEMBER 4, 1935

This cause comes on regularly before the Court this day pursuant to Order to Show Cause why Application for Interlocutory Injunction should not be granted.

Messrs. Kibbey, Bennett, Gust, Smith & Rosenfeld, by John L. Gust, Esquire, appear as counsel for Plaintiff. No appearance is made on behalf of Defendants.

Upon motion of said counsel for Plaintiff, made at the request of counsel for Defendants,

It Is Ordered that this cause be continued and reset for hearing Monday, November 18, 1935, at the hour of ten o'clock A. M. [7]

[Title of District Court and Cause—E-333]

ORDER SUSTAINING MOTIONS TO DISMISS AND JUDGMENT

On October 23, 1935, plaintiff filed its bill of complaint herein; on November 4, 1935, Maricopa County, Arizona, and others; Pima County, Arizona, and others; Graham County, Arizona, and others; Mohave County, Arizona, and others; and Frank Luke, Thad M. Moore and D. C. O'Neil as members of and constituting the State Tax Commission and the State Board of Equalization of the State of Arizona, filed their separate motions to dismiss said bill of complaint; each and all of said motions came duly and regularly on for hearing before the court at Phoenix, Arizona, on March ....., 1936, and after argument by counsel the same were submitted and they and each and all of them were by the court taken under advisement; and, after due con-

sideration and it appearing to be proper, it is ordered adjudged and decreed, and this does order, adjudge and decree:

1. That said motions of Maricopa County, Arizona, an others; Pima County, Arizona, and others; Graham County, Arizona, and others; Mohave County, Arizona, and others; and Frank Luke, Thad M. Moore and D. C. O'Neil as members of and constituting the State Tax Commission and the State Board of Equalization of the State of Arizona, to dismiss the bill of complaint herein be, and the same are hereby granted;

2. That the bill of complaint herein be and the same is dismissed;

3. That the plaintiff herein take nothing by its action and that the said moving defendants, and each and all of them, do have and recover of and from said plaintiff their costs and disbursements herein necessarily expended and hereby taxed in the sum of $.....

Done in open court March 16, 1936.

JAMES H. BALDWIN
United States District Judge
District of Montana, specially assigned. [8]

[Title of District Court and Cause—E-333]

MINUTE ENTRY OF FRIDAY, JUNE 19, 1936

Plaintiff's Motion and Amended Motion for Modification of Order of Dismissal, having heretofore been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,

It Is Ordered that said Motion to Modify Order of Dismissal be granted; that Plaintiff be granted leave to file Amended and Supplemental Complaint, and that an exception be entered on behalf of Defendants. [9]

[Title of District Court and Cause—E-350]

MINUTE ENTRY OF SATURDAY, OCTOBER 31, 1936

The Valley National Bank of Phoenix, a corporation, the plaintiff in the above entitled cause having filed herein its motion for the issuance of an interlocutory injunction as prayed for in the verified bill of complaint herein,

It Is Hereby Ordered, that said application for interlocutory injunction be and the same hereby is set for hearing at the court room of the United States District Court for the District of Arizona, at Phoenix, on the 16th day of November, 1936, at the hour of 10 o'clock A. M., at which time and place

the defendants and each of them are directed to appear and show cause why said interlocutory injunction should not be issued as prayed for.

It Is Further Ordered that notice of said hearing and the time and place thereof be given to the defendants not less than five (5) days before said hearing by serving upon each of said defendants a copy of the verified bill of complaint and a copy of this Order.

Dated this 31st day of October, 1936.

DAVE W. LING
Judge of the United States
District Court [10]

[Title of District Court and Cause—E-350]

MINUTE ENTRY OF MONDAY,
DECEMBER 7, 1936

This case comes on regularly for hearing this day pursuant to Order to Show Cause why Interlocutory Injunction should not be issued.

John L. Gust, Esquire, appears as counsel for the Plaintiff. No counsel appears for the Defendants.

Whereupon, on motion of counsel for the Plaintiff,

It Is Ordered that this case be passed to December 14, 1936. [11]

[Title of District Court and Cause—E-333]

MINUTE ENTRY OF TUESDAY, DECEMBER 8, 1936

ORDER

It appearing from the written stipulation of the plaintiff and the defendants, Maricopa County, Harry M. Moore, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona, J. D. Brush, as County Assessor of Maricopa County, Arizona, and C. W. Peterson, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona, that the plaintiff admits that there is justly due and owing from the plaintiff and its shareholders, to the defendant, Maricopa County, as taxes for the year 1935, the sum of Seventeen Thousand Nine Hundred Thirty-eight and 09/100 ($17,938.09) Dollars, and that the defendants who are parties to the above mentioned stipulation contend that the sum of Forty-nine Thousand Eight Hundred Ten and 86/100 ($49,810.86) Dollars is due and owing from the plaintiff to said Maricopa County as taxes for the year 1935, and that the parties above named are desirous of making and receiving payment of the amount admitted to be due, without prejudicing the rights of any of the parties to the suit with respect to the balance,

Wherefore, Pursuant to Said Stipulation, It Is Hereby Ordered, Adjudged and Decreed that the said plaintiff may deposit with the Clerk of this

Court the said sum of Seventeen Thousand Nine Hundred Thirty-eight and 09/100 ($17,938.09) Dollars, and that said Clerk may pay over said sum to the said Harry M. Moore, as County Treasurer of said Maricopa County, subject to the terms hereinafter set forth, or that said plaintiff may pay said sum direct to said defendant county treasurer to be received by him subject to the conditions hereinafter set forth. That when paid to said defendant county treasurer by said Clerk, or by said plaintiff as and for taxes for the year 1935, upon plaintiff's shares of stock, the receipt and acceptance thereof by said defendant shall be without prejudice on the part [12] of said defendant, or any other defendant to said suit, or to the State of Arizona, the County of Maricopa, or any city, town or school district interested in said taxes, to claim the balance of the amount of taxes heretofore levied and assessed against plaintiff's shares of stock for said year for said purposes, as shown by the tax rolls in said defendant county treasurer's office, and such payment by said plaintiff and such acceptance and receipt by said defendant county treasurer shall be without prejudice on the part of said plaintiff to resist and contest the collection of any further or additional taxes for said year for said purposes, upon plaintiff's shares of stock, upon the grounds and for the reasons set forth in plaintiff's supplemental bill of complaint on file herein, or any other legal ground, and such payment and acceptance shall be without prejudice to the contentions of either the plaintiff

as to the invalidity, or the defendants as to the validity of the amount of taxes for said year, and said purposes in excess of the amount so paid and received, and shall not prejudice the right of said defendants in the event the court shall determine that the original assessment made on said property and contested in this action was or is illegal, to legally reassess said property for said year and in such event the payments hereunder shall be credited upon the amount of taxes which would be assessed and become due under such reassessment, and the tax collector of Maricopa County shall have the right and power to allow such credit and collect only the difference, if any, between the amount paid hereunder and the amount which shall become due under such reassessment.

Dated this 8th day of December, 1936.

DAVE W. LING,
Judge

Approved Dec. 8, 1936.
HARRY JOHNSON
E. G. FRAZIER
JOHN L. SULLIVAN
DUDLEY W. WINDES
Attys. for Defts. [13]

[Title of District Court and Cause—E-350]

MINUTE ENTRY OF TUESDAY, DECEMBER 8, 1936

ORDER

It appearing from the written stipulation of the parties to the above entitled suit on file herein that the plaintiff admits there is justly due and owing from the plaintiff and its shareholders to the respective County Treasurers who are parties defendant to said suit, as taxes for the year 1936, the following sums:

Maricopa County	$14,983.29
Pima County	4,900.84
Graham County	673.71
Yavapai County	677.32
Gila County	4,296.68

And that the parties to said cause are desirous of making and receiving payment of the amount admitted to be due without prejudicing the rights of any of said parties with respect to the balance;

Now, Therefore, pursuant to said stipulation,

It Is Hereby Ordered, Adjudged and Decreed that the said plaintiff may deposit with the Clerk of this court the aforesaid sums and that said Clerk may pay over said sums to the respective County Treasurers who are parties defendant to this suit, subject to the terms hereinafter set forth, or that said plaintiff may pay said sum direct to said County Treasurers and each of them to be received by each of

said County Treasurers subject to the conditions hereinafter set forth; that, when paid to said defendant County Treasurers by said Clerk or by said plaintiff, as and for taxes for the year 1936 upon plaintiff's shares of stock, the receipt or acceptance thereof by said defendants or any of them shall be without prejudice on the part of said defendant or any other defendant to said suit or to the State of Arizona or any of the counties of said state that are defendants to this suit, or any city, town or school district interested in said taxes, to claim the balance or the amount of taxes heretofore levied and assessed [14] upon plaintiff's shares of stock for said year for said purposes as shown by said tax rolls in said defendant County Treasurers Office, and such payment by said plaintiff and such acceptance and receipt by said defendant County Treasurers or any of them shall be without prejudice on the part of said plaintiff to resist and contest the collection of any further or additional taxes for said year for said purpose upon plaintiff's said property upon the grounds and for the reasons set forth in plaintiff's bill of complaint on file herein, or any other legal ground; and such payment and acceptance shall be without prejudice to the contentions of either the plaintiff as to the invalidity or the defendants as to the validity of the amount of taxes for said year and said purposes in excess of the amount so paid and received, and shall not prejudice the right of said defendants or any of them, in the event the court shall determine that the original

assessment made on said property and contested in this action was or is illegal, to legally re-assess said property for said year and in such event the payments herein shall be credited upon the amount of taxes which would be assessed and become due under such re-assessment, and the Tax Collectors of the respective counties shall have the right and power to allow such credit and collect only the difference, if any, between the amount paid herein and the amount which shall become due under such reassessment.

And it further appearing from said written stipulation of the parties, on file herein, that it is agreed by and between said parties that plaintiff shall withdraw its application for interlocutory injunction upon the conditions hereinafter set forth;

It Is Hereby Further Ordered, Adjudged and Decreed that the withdrawal of said application for interlocutory injunction by the plaintiff is hereby approved subject to the condition that the plaintiff shall have the right to renew said application at any time during the pendency of said suit, or any appeal from the judgment therein, in the event any of the defendants shall take any steps to enforce the collection of the balance of the taxes which remain unpaid prior to the time that a final judgment [15] is entered in said cause and the time to appeal therefrom has expired or the same has been affirmed by the court of last resort, and that the defendants and each of them are granted up to and including the 14th day of December, 1936, to file motion to

dismiss or answer to the bill of complaint and that upon the filing of said motion to dismiss or answer, the cause shall proceed in regular course as in said stipulation provided.

Dated this 8th day of December, 1936.

DAVE W. LING
Judge

Approved Dec. 8, 1936
HARRY JOHNSON
E. G. FRAZIER
JOHN L. SULLIVAN
DUDLEY W. WINDES
Atys. for county & tax commission et al.

[16]

[Title of District Court and Cause—E-350]

MINUTE ENTRY OF MONDAY,
DECEMBER 14, 1936

John L. Gust, Esquire, and Charles L. Rawlins, Esquire, appear as counsel for the Plaintiff. Dudley Windes, Esquire, and E. G. Frazier, Esquire, appear as counsel for the Defendants and now file Defendants' Motions to Dismiss herein, and

It Is Ordered that said Motions to Dismiss be set for hearing at this time.

Argument is now had by respective counsel, and

It Is Ordered that said Motions to Dismiss be submitted and by the Court taken under advisement.

[17]

[Title of District Court and Cause—E-333]

MINUTE ENTRY OF
FRIDAY, FEBRUARY 19, 1937

Defendants' Motions to Dismiss Amended and Supplemental Bill of Complaint having been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,

It Is Ordered that said Motions to Dismiss Amended and Supplemental Bill of Complaint be, and the same are denied, and that an exception be entered on behalf of the defendants. [18]

[Title of District Court and Cause—E-350]

MINUTE ENTRY OF
FRIDAY, FEBRUARY 19, 1937

Defendants' Motions to Dismiss Bill of Complaint having been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,

It Is Ordered that said Motions to Dismiss Bill of Complaint be, and the same are denied, and that an exception be entered on behalf of the defendants. [19]

[Title of District Court and Cause—E-333]

ORDER GRANTING LEAVE TO FILE AMENDED AND SUPPLEMENTAL COMPLAINT

Application having been made to this court for leave to file an amended and supplemental complaint, accompanied by a copy of said proposed amended pleading, leave is hereby granted to plaintiff to file said amended and supplemental complaint and the same is hereby directed to be filed with the clerk forthwith;

And, it appearing that certain of the county officials who are named as parties defendant to the original complaint have ceased to hold office and that by the amended and supplemental complaint their successors are made parties defendant, it is ordered that said successor defendants be allowed fifteen (15) days from the date of notice of their said substitution as parties defendant to object thereto.

Dated this 24 day of April, 1939.

DAVE W. LING
Judge. [20]

[Title of District Court and Cause—E-333.]

SECOND AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT:

(For Injunction Against Collection of Taxes) [21]

Comes now the above named plaintiff, and for its

Second Amended and Supplemental Bill of Complaint against the above named defendants, alleges:

I.

That plaintiff is, and was at all times herein mentioned, a corporation, duly incorporated as a national banking association, under the laws of the United States of America, and authorized to do a banking business in the State of Arizona, having its principal banking house at Phoenix, Maricopa County, Arizona, and branches in other cities and towns in the County of Maricopa, and in cities and towns in the counties of Pima, Graham, Mohave, Gila, Greenlee, Pinal and Yavapai.

That plaintiff brings this suit in its own behalf and in behalf and as the agent of the holders of its common stock.

The the defendants, Maricopa County, Pima County, Graham County, and Mohave County, each are and at all times herein mentioned, were duly organized and existing counties of the state of Arizona, and political subdivisions of said state:

That Harry M. Moore is a citizen and resident of Maricopa County, Arizona, and at the time of the filing of the or- [22] iginal complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint he has been succeeded in said office by Ed. Oglesby, a citizen and resident of said Maricopa County, and that said Ed. Oglesby is now the duly elected, qualified and acting County Treasurer and

Ex Officio Tax Collector of Maricopa County, and is sued herein as such officer, having been duly substituted as a party defendant in place of the said Harry M. Moore;

That the defendant, J. D. Brush, is a citizen and resident of Maricopa County, Arizona, and is the duly elected, qualified and acting County Assessor of said County, and is sued herein as such officer;

That the defendants C. W. Peterson, John A. Foote and Geo. Frye, are citizens and residents of Maricopa County, Arizona, and are now and at all times herein mentioned were the duly elected, qualified and acting members of and have constituted and do now constitute the Board of Supervisors of said Maricopa County and the County Board of Equalization of said county;

That Daniel E. Garvey is a citizen and resident of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint, Wallace Bransford, a citizen and resident of Pima county, Arizona, has succeeded said Daniel E. Garvey as County Treasurer and Ex Officio Tax Collector of said county, and is sued herein as such officer, having been legally substituted as a party defendant in said cause in place of the said Daniel E. Garvey;

That the defendant Charles M. Taylor, is a citizen and [23] resident of Pima County, Arizona, and is the duly elected, qualified and acting County As-

sessor of said county, and is sued herein as such officer.

That Warren A. Grossetta, R. H. Martin and J. B. Mead are citizens and residents of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of the Board of Supervisors of said Pima County and the Board of Equalization of said county;

That since the filing of the original complaint in this cause, Thomas Collins, a citizen and resident of Pima County, Arizona, has been duly elected a members of the Board of Supervisors of Pima County, Arizona, to succeed Warran A. Grossetta, and that said Thomas Collins, R. H. Martin and J. B. Mead do now constitute the Board of Supervisors of Pima County, Arizona, and are sued herein as such officers, the said Thomas Collins having been substituted as a party defendant in place of Warren A. Grossetta;

That Charles M. Geitz was a citizen and resident of Graham County, Arizona, and was the duly elected, qualified and Acting County Treasurer and Ex Officio Tax Collector of said county at the time of the filing of the original complaint in this cause; that since the filing of the original complaint in this cause Earl M. Lines has succeeded the said Charles M. Geitz as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county and is sued herein as such officer, having

been substituted as a party defendant in place of said Charels M. Geitz;

That the defendant, Alvin Goodman, is a citizen and resident of Graham County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer:

[24]

That J. W. Greenhalgh, Glen Hoopes and Virgil McEuen, are citizens and residents of Graham County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of, and constituted the Board of Supervisors of said Graham County, and the County Board of Equalization of said county;

That since the filing of the original complaint in this cause, Ernest D. Householder and M. E. Dubois, citizens and residents of Graham County, Arizona, have succeeded J. W. Greenhalgh and Virgil McEuen as members of the Board of Supervisors of said Graham County, and the said Glen Hoopes, Ernest D. Householder and M. E. Dubois now constitute the Board of Supervisors of said Graham County and the Board of Equalization of said county, and are sued herein as such officers, the said Ernest D. Householder and M. E. Dubois having been substituted as parties defendant in the place of J. W. Greenhaigh and Virgil McEuen;

That C. B. Tatum is a citizen and resident of Mohave County, Arizona, and at the time of the filing of the original complaint in this cause was the

duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint he has been succeeded in said office by A. M. Cook, a citizen and resident of Mohave County, and that said A. M. Cook is now the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Mohave County, Arizona, and is sued herein as such officer, having been duly substituted as a party defendant in the place of said C. B. Tatum;

That the defendant, W. O. Ruggles is a citizen and resident of Mohave County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

[25]

That the defendants, F. L. Hunt, W. D. Lawe and E. T. Lyons are citizens and residents of Mohave County, Arizona, and at the time of the filing of the original complaint in this cause were the duly elected, qualified and acting members of the Board of Supervisors of said Mohave County, and the Board of Equalization of said county; that since the filing of the original complaint in this cause, William Mackie and George F. Moser, each a citizen and resident of Mohave County, Arizona, have been duly elected members of the Board of Supervisors of Mohave County, Arizona, to succeed F. L. Hunt and E. T. Lyons, and that said W. D. Lawe, William Mackie and George F. Moser, do now constitute the Board of Supervisors of Mohave County, Arizona, and are sued herein as such officers, the

said William Mackie and George F. Moser having been substituted as parties defendant in place of F. L. Hunt and E. T. Lyons.

That the defendants, Frank Luke, Thad M. Moore and D. C. O'Neil are residents of Maricopa County, Arizona, and are now and at all times herein mentioned have been the duly elected, qualified and acting members of and have constituted, and do now constitute the State Tax Commission and State Board of Equalization of the State of Arizona.

II.

That this is a suit of a civil nature, in equity, arising under the Constitution and laws of the United States, and that the amount involved herein, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

III.

That the plaintiff now exercises, and from and since the 11th day of February, 1935, has exercised in the City of Phoenix, and the Cities of Glendale and Mesa, in Maricopa County, Arizona, in the city of Tucson, and the town of Ajo, [26] in Pima County, Arizona, in the town of Safford, Graham County, Arizona, in the city of Kingman, Mohave County, Arizona, and in the cities of Globe and Miami, and town of Hayden, in Gila County, Arizona, in the town of Clifton, Greenlee County, Arizona, in the towns of Superior, Coolidge and Casa Grande, in Pima County, Arizona, and in the

city of Prescott, Yavapai County, Arizona, normal banking powers conferred upon it by law as a national banking association, including the receiving of commercial deposits, demand and time saving deposits, evidenced by certificates of deposit, the purchase and sale of government, state and municipal bonds, the maintenance of a trust department, the purchase and discount of commercial paper, the loaning of money on financial statements, and upon collateral security, and upon real estate and chatiel mortgages executed to the plaintiff or assigned to and deposited with it as collateral security, and the investment of money in notes, bonds and mortgages and other securities, and evidences of indebtedness.

IV.

That is was and is provided by Section 1, of Article IX of the Constitution of the State of Arizona, that all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.

That it was and is provided by Section 2, of Article IX of the Constitution of the State of Arizona, that there shall be exempt from taxation all federal, state, county and municipal property.

That it was and is provided by Section 3068, Revised Code of Arizona for 1928, that all taxable property within said state must be assessed at its full cash value, and that the term, "full cash value" shall mean the price for which property would sell if voluntarily offered for sale by the [27] owner

thereof upon such terms as such property is usually sold, and not the price that might be realized if such property were sold at a forced sale.

That it was and is provided by Section 3069, Revised Code of Arizona for 1928, as amended by Chapter 110, Session Laws of Arizona for 1931, that the property of corporations shall be assessed and taxed, and no assessment shall be made on shares of stock of corporations, nor shall any holder thereof be taxed for such shares, but that said provisions with reference to the taxing of shares of stock shall not apply to banking corporations, building and loan associations or corporations, and corporations or associations engaged in the business of using money wherewith to make money for the owners of their shares, and that the shares of stock of such banking corporations, and other corporations and associations shall be assessed and taxed as other property in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of and be payable by such corporation or association.

V.

That is was and is provided by Section 11, of Article IX of the Constitution of Arizona, that the manner, method and mode of assessing, equalizing, and levying taxes in the State of Arizona, shall be such as may be prescribed by law.

That it was and is provided by Section 3074, Revised Code of Arizona, 1928, that between the first Monday in January, and the first day of May, of

each year, the County Assessor, (except as otherwise required by the State Tax Commission) shall ascertain by diligent inquiry and examination all property in his county subject to taxation, the names of all persons owning, claiming, or having possession or control thereof, determine the full cash value of all such property, and list and assess the same to the person owning, claiming or [28] having the possession, charge, or control thereof.

That it was and is provided by Section 3070, Revised Code of Arizona for 1928, that upon the demand of the Assessor the officers in charge of any banking corporation or corporations or association engaged in the business of using money wherewith to make money, shall make out and deliver to the assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares owned by him, the surplus, reserve fund and undivided profits, and the par and market value of the shares, and that the full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return to any officer of the state or the United States, from actual sales of the stock, or from other trustworthy sources, and that every such shareholder shall, where such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein, and if the shareholder fail to do so the assessor shall list and assess such unrendered shares as other unrendered property, and

that the taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to any shareholders who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3071, Revised Code of Arizona for 1928, that every such corporation or association for the purpose of said assessment shall be considered as located in every county, city or town wherein it has an office for the purpose of carrying on its business, and the [29] shares shall be subject to taxation in any county, city or town wherein it has such office, that the officer of such corporation or association shall state in his statement if his association or corporation is subject to taxation in more than one county, city or town, and the proportion of its assets situated in each thereof, and that the shares of such corporation or association shall be taxed in each county, city or town, for only such portion of their assets as the assets situated in that county, city or town bear to the assets of the entire corporation or association, and that when a bank maintains branches or conducts business in more than one county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches

are maintained or business conducted, and the amount apportioned to each county, city or town shall not be less than the actual cash value of the real and personal property of such bank situated in such county, city or town.

VI.

That on the 11th day of February, 1935, the day plaintiff engaged in the banking business as a national bank, and at all times thereafter until after the first Monday in May, 1935, the amount of its capital stock was $260,000.00, its surplus was $260,000.00, its undivided profits were $90,026.52, and its resources $89,000.00, making a total as the basis for the valuation of its shares of common capital stock of $699,026.52. That its common capital stock consisted of 52,000 shares, of the par value of $5.00 each. That to provide the plaintiff with sufficient capital to enable it to comply with the laws and regulations pertaining to national banks in the acquisition and transaction of the banking business which it acquired on said 11th day of February, 1935, the Reconstruction Finance Corpora- [30] tion of the United States of America, purchased from the plaintiff, and the plaintiff sold to said Reconstruction Finance Corporation, $1,240,000.00 par value of preferred stock. That said preferred stock so issued and sold to said Reconstruction Finance Corporation consisted of 198,400 shares of the par value of $6.25 each, and that all of said preferred stock was issued to said Reconstruction Finance

Corporation, and said Reconstruction Finance Corporation paid to plaintiff therefor the par value thereof, on or prior to said 11th day of February, 1935, and ever since the issuance thereof said preferred stock has been and now is owned and held by and is the property of the Reconstruction Finance Corporation of the United States of America.

VII.

That after the 11th day of February, 1935, and prior to the first day of May, 1935, an officer of the plaintiff, duly authorized for said purpose, made and delivered a statement such as is provided for by Sections 3070 and 3071, Revised Code of Arizona for 1928, to each of the assessors of the respective counties in which its main office or any of its branches was and is situated, including all of the counties made parties defendant to this suit. That each of said statements showed the number of plaintiff's shares, the names and residences of each shareholder owning and holding the shares of its common stock and the shares of its preferred stock above mentioned, the number of shares owned by each shareholder, the amount of capital, surplus and undivided profits, as above stated, and the par value of its shares, both common and preferred, as is required by Section 3071, Revised Code of Arizona, 1928. Each of said statements showed the proportion of plaintiff's assets situated in each of the counties in which its principal office or a branch thereof was and is situated. That said [31] statement showed

the common capital stock of the plaintiff was $260,000.00, that its surplus was $260,000.00, that its undivided profits were $90,026.52, and that its reserves were $89,000.00, making a total as the basis for the valuation of its common capital stock of $699,026.52. That said statement also showed that the following percentages of said amount were properly apportioned to the respective counties, to-wit:

Maricopa County,	54.57 per cent
Pima County,	26.53 per cent
Graham County,	2.34 per cent
Mohave County,	1.37 per cent
Gila County,	6.86 per cent
Greenlee County,	3.32 per cent
Pinal County,	3.22 per cent
Yavapai County,	1.79 per cent

VIII.

That for many years immediately prior to the year 1934, it was the uniform practice followed by the county assessors of the several counties of the state of Arizona, and approved by the Tax Commission of the State of Arizona, to value for tax purposes the shares of stock of each of the banks in the State of Arizona at an aggregate amount equal to the capital stock, surplus and undivided profits of each of said banks, as shown by the books of said bank, and that in the year 1934, all or substantially all of the banks in the State of Arizona protested to the State Tax Commission of the State

of Arizona, sitting as a Board of Equalization, against the valuation of their shares of stock on said basis, for the reason that the same constituted an assessment of the capital stock of said banks at its full cash value, when other classes of property in said state were assessed at an amount equal to 60% of their cash value, and that in the consideration of said protests, said State Tax Commission, sitting as a Board of Equalization, in the year 1934, made a thorough examination of the valuation of shares of bank stock in the state of Arizona, and after such [32] examination ordered that shares of bank stock should be valued by the following method: (1) That the statements filed by said banks should be revised and corrected by the use of the best information available; (2) That the shares of stock should be valued at 75% of the capital stock, surplus and undivided profits as shown by said revision of the banks statement. That said Tax Commission made no determination with reference to the taxability of shares of preferred stock of banks owned and held by Reconstruction Finance Corporation and expressly left that question to be determined by the courts.

IX.

That plaintiff is informed and believes, and upon such information and belief states that the State Tax Commission of the State of Arizona, said Tax Commission consisting of the same individuals as the State Board of Equalization, in the exercise of

its supervisory powers over the county assessors of the State of Arizona, directed and instructed the county assessors of the State of Arizona to value for tax purposes for the year 1935, the shares of stock of all banks in the state at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks, and that the county assessors of the several counties of the state, (except the county assessor of Mohave county) in pursuance of said instructions of the State Tax Commission, valued for tax purposes for the year 1935 the capital stock of all banks in their respective counties at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks as shown by the books of said banks.

X.

That in pursuance of a general plan and understanding among the taxing officials of the state of Arizona, including the members of the State Board of Equalization who are parties [33] to this suit it has been the practice of the taxing officials of the state of Arizona for many years to assess property in the state of Arizona generally, at an amount equal to approximately 60% of its full cash value, and that said practice, in pursuance of said general plan and understanding among said taxing officials, was continued and followed in the year 1935, and was approved by the State Board of Equalization in the year 1935.

XI.

That the county assessors of Gila, Greenlee, Pinal and Yavapai Counties, fixed the valuation of plaintiff's shares of stock for tax purposes for the year 1935 in their respective counties by following the instructions of the said State Tax Commission, and applying the same to the statements filed by the plaintiff in their respective counties, that is to say, by adding together the common capital stock, surplus and undivided profits and reserves, as shown by said statement, and taking the percentage of the sum so arrived at shown by plaintiff's statement as the proper percentage for that county, and then taking 75% of the amount so arrived at as the assessable value of plaintiff's shares of stock in said county. That plaintiff makes no objection to the valuations arrived at by the counties of Gila, Greenlee, Pinal and Yavapai, as hereinabove set forth, and has not made, and does not now make any protest or objection to said valuations.

XII.

That the County Assessor of Maricopa County arrived at the valuation to be placed upon plaintiff's shares of stock for tax purposes for the year 1935 by adding together the amount of the common capital stock, surplus, undivided profits and reserves shown by the statement filed by him as aforesaid, and adding to the amount so arrived at the sum of $1,240,000.00, [34] being the par value of the preferred stock of plaintiff issued to and owned and

held by the Reconstruction Finance Corporation, as hereinbefore alleged, the total so arrived at being the sum of $1,939,026.00. Said county assessor then took 54.57 per cent of said sum, (said 54.57% being the percentage shown by the statement filed with him by plaintiff as the percentage properly apportioned to Maricopa county), thus arriving at $1,058,126.77 as the amount apportioned to Maricopa County, and then computed 75% of said amount, making the sum of $793,595.08, which sum said assessor placed on the tax roll as the assessable value of plaintiff's shares of stock for tax purposes for the year 1936 in said Maricopa County. That of the aforesaid valuation of $793,595.08, 54.57% of 75% of $1,240,000.00, or $507,501.00, was and is the valuation placed by said county assessor upon Maricopa County's proportion of the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

XIII.

That the county assessor of Pima county assessed the shares of stock of the plaintiff in said county by placing a valuation on the real and personal property owned and held by the plaintiff in said county as follows, to-wit:

ASSESSED VALUATION OF VALLEY NATIONAL BANK OF ARIZONA, PIMA COUNTY

1935

Co-Apportionment—13,795.6 shares of stock @ *$23,7459*
Totalling $327,590.00

REAL ESTATE, IMPROVEMENTS & PERSONAL PROPERTY HOLDINGS OF VALLEY NATIONAL BANK OF ARIZONA, PIMA COUNTY.

1935

Description of	Lot	Blk	Real Estate Valuation	Imps. Valuation	Personal Prop. Valuation
Ajo	4	15	125		
Ajo	5	15	150	1405.	785.00
					[35]
Tucson S 62′ of N 123.04′ of W. 72.94′ of Lot 3	10	208	13,020		
Tucson N 58′ of W 64.73′ of Lot 3 together with a 3′ strip on S—sub	12	208	27,945	171130	110,000.00
Rincon Heights	13	8	110		
Rincon Heights	14	8	110	1370	
S½SW¼SW¼SW¼ (3)	21-13-14	D-4 Acres	10		
		W-1	5		
E½SW¼ less parcel 1 & 5 (4)	26-13-14	D-58.81a	335		
S½SE¼NW¼ & NW¼ SE¼NW¼ & E½SE¼ NW¼ (6)	27-13-14	P-20a	220		
		W-15a	15		
S½SW¼NW¼ (8)	27-13-14	P-17a	190	55	
		W-3a	5		
S½SW¼NW¼ (17)	27-13-14	1-5	115		
		W-15	15		
Part of N½ S½ of Sec 28 lying N of Rillito R (18)	28-13-14	D-25	75		
		W-31.3	30		

Description of	Lot	Blk	Real Estate Valuation	Imps. Valuation	Personal Prop. Valuation
E½SW¼NW¼ & E½ NW¼SW¼NW¼ & E½SW¼SW¼NW¼ (23)	28-13-14	P-10	110		
		D-10	30		
		W-7.5	10		
S¾S½SW¼NE¼ (28)	28-13-14	1-5	115		
		D-10	60		
E½ of SW¼NW¼NW¼ & E½NW¼NW¼NW¼ (42)	28-18-14	P-1.6	20		
		W-5.9	5		
		Total	$327,590.00		

Detail of Personal Property:
Bank Fixtures ..... $110,000.
Bank Fixtures in Ajo ..... 875.

XIV.

That it appears from the foregoing computation made by the county assessor of Pima County that the valuation arrived at by said county assessor in Pima County for the year 1935, was $327,590.00. That the assessment made by said assessor [36] does not show whether said valuation was intended to be imposed upon the tangible real and personal property owned by plaintiff in said county, or upon plaintiff's common capital stock, or upon plaintiff's preferred stock. If said valuation is construed as imposed upon plaintiff's real and personal property, it is wholly void as unauthorized by the statutes of the state of Arizona, and if it is construed as imposed upon plaintiff's common stock, it amounts to

a valuation of that portion of plaintiff's shares of common stock assessable in Pima county of approximately $6.30 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of approximately $23.75 per share. That $400,000.00 worth of the $1,240,000.00 par value of plaintiff's preferred stock was purchased from plaintiff by Reconstruction Finance Corporation for the express purpose of enabling plaintiff to purchase the assets of Consolidated National Bank, a national bank doing business at Tucson, Pima County, Arizona. That said assets of said Consolidated National Bank were practically all situated in said Pima county, and were purchased by plaintiff in February, 1935. That among said assets were the banking furniture and equipment and the banking house and office building owned by said Consolidated National Bank in the city of Tucson, which constitute practically all of the tangible real and personal property assessed in the manner aforesaid, as constituting the assessable value of plaintiff's shares of stock in Pima county.

XV.

That the aforesaid valuation of the county assessor of Pima county was excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, the undivided profits of $90,926.52, and the reserves of $89,000.00, is $699,026.52, which represents [37] the shares of common capital stock of the plain-

tiff. Of this amount 26.53%, or the sum of $185,451.73 is properly apportioned to Pima county, representing that portion of plaintiff's shares of common stock apportioned to Pima county. To make allowance for probable shrinkage in book assets, and the normal difference between the book value of assets and the actual value of the shares of stock in accordance with the method prescribed by the State Tax Commission as aforesaid, one-fourth thereof, or the sum of $46,362.93 must be deducted, leaving the amount of $139,088.80 as the actual cash value for the year 1935, of that portion of plaintiff's shares of common stock which is assessable in Pima county. That the excess over said sum of $139,088.80 assessed against the shares of stock of plaintiff by the county assessor of Pima County, which is the amount of $188,501.20, was assessed on account of valuations represented by plaintiff's preferred stock owned and held by the Reconstruction Finance Corporation.

XVI.

That the County Assessor of Graham County assessed the shares of stock of the plaintiff in said county by placing a valuation on the real and personal property owned and held by the plaintiff in said county as follows:

West 30 feet of Lot 1, Safford, Block 39:	
Value of Land	$ 2,250.00
Value of Improvements	14,615.00
Lot 8, K & G, Block 2:	
Value of Land	$ 120.00
Summary of Values:	
Total personal property	$ 5,605.00
Total Real Estate	2,370.00
Total improvements	14,615.00
Total for County and State taxation	$22,590.00

That in addition to the foregoing, said Assessor assessed [38] certain real estate acquired by the plaintiff in the year 1935, prior to the date that the above and foregoing assessment was made, from The Consolidated National Bank of Tucson, as follows:

Northwest Quarter (NW¼) and West Half (W½) of the Northeast Quarter (NE¼) and Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of Section 21, Township 6, Range 25:	
Acres	142
Class of Land	CUL
Value of Land	$4,050.00
Lots One (1) and Two (2), Section 21, Township 6, Range 25:	
Acres	50
Class of Land	CUL
Value of Land	$1,420.00
Value of Improvements	1,200.00
Consolidated National Bank:	
Acres	125
Class of Land	W
Value of Land	$ 125.00
Total Real Estate	$5,595.00
Total Improvements	1,200.00
Total for County and State Taxes	$6,795.00

That all of the foregoing property of plaintiff assessed by said county assessor of Graham county was acquired by plaintiff on or prior to the 11th day of February, 1935, from The Valley Bank & Trust Company, a State Bank, and the Consolidated National Bank of Tucson, a National Banking Association, both of which institutions were actively engaged in transacting a banking business at and prior to the time when said property was transferred by them to the plaintiff and that all of said property was included in the statement of capital, surplus, undivided profits and reserves filed by the plaintiff with said county assessor as aforesaid.

XVII.

That the total amount of the assessment in Graham county, being the sum of $22,590.00, plus $6,795.00, or [39] $29,385.00, as shown by the above tabulations, was arrived at by said county assessor by taking the assessable value of all of the real and personal property owned by the plaintiff in said county. That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon the real and personal property owned by the plaintiff in said county, or whether it was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If construed as imposed upon the tangible real and personal property of plaintiff in said county, it is wholly unauthorized and void under the statutes of the state of Arizona. If it is construed as imposed

upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Graham county, of approximately .56¢ per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of approximately $24.00 per share. That $840,000.00 worth of the $1,240,000.00 worth, par value of plaintiff's preferred stock was purchased from plaintiff by Reconstruction Finance Corporation for the express purpose of enabling plaintiff to pay off a debenture of $840,000.00 owed by The Valley Bank & Trust Company to Reconstruction Finance Corporation. Said The Valley Bank & Trust Company was a state bank, having its principal place of business in Maricopa County, and branches in several other counties, including Graham County. That all of the assets of said bank were purchased by plaintiff in February, 1935, and said debenture of $840,000.00 was paid by plaintiff out of the proceeds of plaintiff's preferred stock sold to Reconstruction Finance Corporation. That the assets of the Graham county branch of said The Valley Bank & Trust Company were 4.427% of the total assets of said The Valley Bank & Trust Company, and the pro rata part of the Graham county branch of said debenture of [40] $840,000.00 was 4.427% of said $840,000.00, or $37,186.80 of the proceeds plaintiff received from the sale of its preferred stock to Reconstruction Finance Corporation went into said Graham county branch. That the

aforesaid valuation by said county assessor of Graham county was and is excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, and the undivided profits of $90,026.52, and the reserves of $89,000.00 which represents the shares of common capital stock of plaintiff, is $699,026.52. Of this amount, 2.34%, or $16,357.22, is properly apportioned to Graham county, representing that portion of plaintiff's shares of common stock apportioned to Graham county. From said sum must be deducted one-fourth thereof, or the sum of $4,089.80 to make allowance for probable shrinkage in book assets and the normal difference between the book value of the assets and the actual value of the shares of stock, in accordance with the method prescribed by the State Tax Commission, as aforesaid, leaving the amount of $12,267.42 as the true valuation for tax purposes for the year 1933 of that portion of plaintiff's shares of common stock which is assessable in Graham county. That the valuation arrived at by the county assessor of Graham county in excess of said sum of $12,267.42, said excess being $17,117.58, was assessed upon values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

XVIII.

That if the aforesaid assessments by the county assessors of Pima and Graham counties are construed as assessments and valuations of the property

owned and held by the plaintiff in said counties as other property held by individuals and other corporations of said counties are assessed and valued, said assessments and valuations are wholly unauthorized and void [41] for the reason that under the provisions of Section 3069, Revised Code of Arizona for 1928, and the decisions of the Supreme Court of Arizona construing said section, the property of banking associations or corporations engaged in the business of banking is not assessable or taxable, but only the shares of stock of such banking association or corporations are assessable and taxable.

That if the aforesaid assessments and valuations in Pima and Graham counties are construed as assessments and valuations of the shares of stock of the plaintiff, both common and preferred, and the taxes computed thereon payable by the holders of the common and preferred stock, said assessments and valuations are wholly void for the reason that said shares of preferred stock being owned and held by the Reconstruction Finance Corporation of the United States, are wholly exempt from state, county and local taxation under the Constitution and laws of the United States, and the Constitution and laws of the State of Arizona, and said assessments do not segregate the valuation placed upon the shares of common stock from the valuation placed upon the shares of preferred stock. That the shares of preferred stock of plaintiff are preferred both as to

dividends and as to distribution of assets in case of liquidation, and are limited to participation in dividends and in distribution of assets in the event of liquidation, and that as a result of such preferences and limitations so conferred and imposed upon them, the relation of the actual value of said shares to the par value thereof is not the same as the relation of the actual value of the shares of common stock to the par value of said common shares.

That if the aforesaid assessments in Pima and Graham counties are construed as assessments and valuations of the shares of common stock of the plaintiff, and the taxes computed [42] thereon payable wholly by the owners of said shares of common stock, then such assessments and valuations are wholly void, for the reason that the same are excessive, confiscatory and discriminatory, greatly in excess of the actual value of said common shares, and discriminatory between the holders of said shares of common stock and the holders of common shares of stock in other banks, and also between the holders of the shares of common stock in the plaintiff, and other classes of property assessed in said counties of Pima and Graham, and in said state of Arizona, for the following reasons:

1. That said assessments and valuations are void and confiscatory for the reason that in Pima county the sum of $188,501.20 of the total assessment of $327,590.00, and in Graham county the sum of $17,117.58 of the total assessment of $29,385.00, is as-

sessed against said shares of common stock, not by reason of any assets represented by said shares of common stock, or by reason of any inherent value of said shares of common stock, but by reason of values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

2. That said assessments and valuations are excessive and confiscatory for the reason that said valuations of $327,590.00 in Pima county, if deemed the valuation placed upon the shares of common stock of plaintiff, is a valuation of approximately $23.75 per share, and said valuation of $29,385.00 in Graham county, if deemed a valuation placed upon the shares of common stock of plaintiff is a valuation of approximately $24.00 per share, when the book value of said shares of stock determined by the value of the assets of the plaintiff, as shown by plaintiff's books is approximately $13.50 per share, and the actual value of said shares of common stock as determined by actual sales made during the assessment period [43] for the year 1935 is approximately $11.00 per share.

3. That the said assessments and valuations of $327,590.00 of Pima county, and of $29,385.00 in Graham county, if construed as assessments upon plaintiff's shares of common stock, are discriminatory against the holders of plaintiff's shares of common stock and in favor of the holders of common stock in other banks in the state of Arizona, for the

reason that the holders of the common stock in other banks (said banks as far as known to the plaintiff having issued no shares of preferred stock owned or held by the Reconstruction Finance Corporation), have been assessed and valued by the direction of the State Tax Commission for tax purposes for the year 1935 at 75% of the capital stock, surplus and undivided profits of said banks, and that the holders of common stock of the plaintiff have been assessed for tax purposes in said two counties for the year 1935 at approximately twice the capital stock, surplus and undivided profits of the plaintiff.

4. That if said assessments and valuations of $327,590.00 in Pima county, and $29,385.00 in Graham county, are construed as assessments and valuations upon portions of plaintiff's common stock said assessments and valuations discriminate against the holders of the common stock of the plaintiff and in favor of the owners and holders of other classes of property in the state of Arizona, in that said shares of common stock of the plaintiff have been valued and assessed at approximately twice the actual value thereof, when other classes of property in the state of Arizona, by a general plan adopted by said taxing officials of the state of Arizona, have been valued and assessed at not to exceed 60% of their actual cash value.

5. That if said assessments and valuations are construed as assessments and valuations of the shares of common stock of plaintiff, said assessments and valuations discriminate [44] against the

owners and holders of plaintiff's shares of common stock and in favor of the owners and holders of other moneyed capital in the state of Arizona, in violation of Section 548, Title 12 of United States Code Annotated, in that said shares of stock have been assessed at approximately twice their actual value, while other moneyed capital in the hands of individual citizens of the state of Arizona coming into competition with the business of national banks, has been assessed at not to exceed 75% of its actual cash value.

XIX.

That the County Assessor of Mohave County assessed the shares of stock of the plaintiff as follows: He added together its common capital stock of $260,000.00, its surplus of $260,000.00, its undivided profits of $90,026.52, and its reserves of $89,000.00, making a total valuation of its shares of common stock of $699,026.52, and taking 1.37% thereof as the proper percentage for Mohave County, thus arriving at a calculation of $9,576.66, which said county assessor placed on the tax roll as the valuation of plaintiff's shares of stock for tax purposes for the year 1935 in his county; that said valuations so made by the county assessor of Mohave County included no valuations attributable to preferred stock of the plaintiff, and was proper, except that there should have been deducted from the sum of $9,576.66 as shown by the statement filed by plaintiff, one-fourth thereof, or the sum of $2,394.16 and leaving the sum of $7,182.50 as the actual cash value

for tax purposes for the year 1935 of that portion of plaintiff's shares of common stock which is assessable in Mohave county. That said deduction of one-fourth must be made as aforesaid in order to place the valuation of plaintiff's shares of stock on the same basis as the valuation of the shares of stock of other banks in the state of Arizona, which were all valued [45] either by the county assessors or the State Board of Equalization by the method prescribed by the State Tax Commission hereinabove set forth.

XX.

That within the time provided by law plaintiff *filed* a written protest against the foregoing valuations of its shares of stock herein complained of with the County Board of Equalization in each of the counties of Maricopa, Pima, Graham and Mohave, being all of the counties in which the assessments and valuations of its shares of stock are complained of herein, and that within the time provided by law plaintiff appeared before the County Board of Equalization in each of said counties and urged the correction and reduction of said assessments in all respects herein complained of. That each of said County Boards of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XXI.

That none of the aforesaid County Boards of Equalization made any changes in the valuations made as aforesaid by the respective county assessors

upon the shares of stock of the plaintiff, and the Clerk of each of said boards of supervisors, immediately after the July adjournment of said Boards of Equalization, transmitted to the State Board of Equalization the respective valuations made as aforesaid by the respective county assessors, which valuations were as follows, to-wit:

County	Valuation on Tax Roll
Maricopa	$793,595.08
Pima	327,590.00
Graham	29,385.00
Mohave	9,576.66

XXII.

That on or about the 7th day of August, 1935, the plaintiff filed a written protest with the defendants, Frank Luke, [46] Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization of the State of Arizona, protesting against the valuations of its shares of stock in Maricopa County, Pima County, Graham County and Mohave County, protesting against said valuations in all respects herein complained of, and on said 7th day of August, 1935, the plaintiff appeared before said Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization, and urged the correction and reduction of said valuations in all respects herein complained of. That said defendants, sitting as a Board of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XXIII.

That within the time provided by law the said State Board of Equalization fixed the rate of taxation to be levied for state purposes transmitted to the Board of Supervisors of each of the respective counties that are parties defendant to this suit, a statement of the changes which it had made in the assessment, (no change whatever having been made in the assessment of plaintiff's shares of stock) and the rate of taxes which was to be levied and collected within said county for state purposes. That each of said Board of Supervisors received said statement and ordered placed on the tax roll the respective valuations made by the respective county assessors as hereinabove alleged.

XXIV.

That after the completion of the valuation of plaintiff's shares of stock and the placing thereof on the tax rolls as aforesaid in the respective counties, the Board of Supervisors and the governing bodies of the cities and towns in each of said counties, (except the city of Phoenix, in Maricopa County), finally determined the estimates provided for by Section 3098 Revised Code of Arizona for 1928, and the school superintendents [47] in said counties furnished to said Boards of Supervisors the estimates provided for by Section 1090, Revised Code of Arizona for 1928, and said Boards of Supervisors assessed taxes for the several amounts estimated as well as the state tax, at the rate fixed as

aforesaid, upon the taxable property of the county and computed and carried out the real and personal taxes and total taxes of each person on said tax rolls, and computed at the proper tax rates determined by the Board of Supervisors of the State Board of Equalization upon the aforesaid valuations, and entered upon the said tax rolls as taxes upon the shares of stock of the shareholders of the plaintiff, and as payable by the plaintiff, the following amounts, to-wit:

Maricopa	$49,810.86
Pima	20,362.98
Graham	1,894.88
Mohave	399.08

XXV.

That upon completion of the tax rolls for the year 1935, said tax rolls containing thereon the respective items of taxes set forth in Paragraph XXIV above, the Chairman of the Board of Supervisors of each of said counties, as prescribed by statute, annexed thereto under his hand, a warrant, commanding the County Treasurer and Ex-Officio Tax Collector to collect from the several persons named in said tax roll; including plaintiff, one-half of the taxes set opposite their respective names, including the illegal and void taxes, taxed, assessed and levied as aforesaid, on or before the first Monday in November, 1935, and the other one-half of said taxes on or before the first Monday in May, 1936. That said tax rolls, together with said warrants,

were delivered to the respective county treasurers of said counties parties defendant hereto, in the manner and within the time provided by law. [48]

XXVI.

That upon receipt of said assessment and tax rolls each of said county treasurers being parties defendant hereto, gave official notice specifying that one-half of said taxes, including said illegal and void taxes so levied and assessed upon plaintiff's said shares of stock, would be due and payable on the first Monday in September, 1935, and would become delinquent on the first Monday in November, 1935, at 5:00 o'clock p. m., and that the remaining one-half of said taxes would be due and payable on the first Monday in March, 1936, and would become delinquent on the first Monday in May, 1936, at 5:00 o'clock p. m., and that unless said taxes were paid prior to becoming delinquent, interest would accrue thereon from the time of such delinquency at the rate of ten per cent per annum until paid, or until said property or such part thereof as was necessary had been sold, and thereafter interest would accrue thereon at the rate provided in the tax certificates issued covering the sale of said property, but not to exceed fifteen per cent per annum.

XXVII.

That before the first Monday in November, 1935, and before the filing of this bill of complaint, and

during the regular office hours of the respective county treasurers who are parties defendant hereto, plaintiff tendered and offered to pay to each of said county treasurers the amount of taxes which plaintiff believes to be justly due and owing by the owners and holders of its shares of common stock to said county treasurers for state, county and local taxes for the year 1935. The amounts which the plaintiff so tendered and offered to pay to each of said county treasurers are as follows:

Maricopa County,	$17,938.09
Pima County,	8,637.30
Graham County	808.58
Mohave County	298.78

[49]

The plaintiff determined the amounts so above tendered as the amounts justly due and owing to the said county treasurers for taxes for the year 1935, by computing the valuations of its common capital stock in the manner in which said county treasurers were directed to compute the same by the State Tax Commission, excluding, however, from said computation plaintiff's shares of preferred stock held by the Reconstruction Finance Corporation and the assets represented thereby. That is to say, plaintiff added together its common capital stock of $260,000.00, its surplus of $260,000.00, its undivided profits of $90,026.52, and its reserves of $89,000.00, making the sum of $699,026.52, and then took the proper percentage thereof

apportioned to each of said counties, to-wit: Maricopa County 54.47 per cent, Pima County 26.53 per cent, Graham County, 2.34 per cent, Mohave County, 1.37 per cent, which gave the following figures:

Maricopa County,	$381,458.77
Pima County	185,451.73
Graham County,	16,357.22
Mohave County,	9,576.66

and then took 75% of each of said amounts, thus arriving at the actual cash value in each of said counties for plaintiff's shares of stock as follows:

Maricopa County,	$286,094.08
Pima County,	139,088.80
Graham County	12,267.91
Mohave County,	7,182.50

and computed the tax at the respective rates as fixed in said counties by the proper authorities therein, thus arriving at the taxes in each of said counties at the amounts alleged to have been tendered.

That the amount so tendered by plaintiff is the amount of taxes which would have been assessed against the shares of common capital stock in the several counties that are parties [50] defendant hereto by the action of the assessing officials and State Board of Equalization if said taxing officials and said State Board of Equalization had applied the same basis of valuation to plaintiff's shares of

common capital stock as they applied to the shares of other banks, state and national, doing business in the state of Arizona, and is likewise the amount that the taxing officials and State Board of Equalization would have assessed plaintiff's shares of common capital stock if they had not attempted to impose additional taxes upon plaintiff by reason of the fact that preferred shares of stock of the plaintiff were owned and held by the Reconstruction Finance Corporation.

XXVIII.

That each of the said county treasurers aforesaid refused and continues to refuse to accept payment of the amount tendered upon the ground that said amount tendered was not the full amount of taxes assessed to and payable by plaintiff for the purposes for which it was tendered. That each of said county treasurers, on refusing said tender, declared that it was his duty to collect from plaintiff the amount of taxes assessed against plaintiff's shares of stock that appeared on his books, and that he would proceed to collect the same in accordance with the laws of the State of Arizona.

That plaintiff has been and is willing and able, and has stood ready and will continue to stand ready to pay to each of the above mentioned county treasurers the amounts tendered as aforesaid, and that if this court shall hold that the sums which plaintiff has tendered and offered to pay to the said county treasurers, or any of them, for the

purposes for which said tenders were made, are less than the amounts found justly and equitably due and owing by the plaintiff to the said county treasurers, or any of them, for 1935 taxes, plaintiff stands [51] ready, able and willing to pay, and will pay to the said county treasurers, and each of them, such other and further sum or sums as this court shall find to be just and equitable.

XXIX.

That it was and is provided by Section 3101, Revised Code of Arizona for 1928, as amended by Chapter 106, Session Laws of Arizona for 1931, that all taxes levied upon real or personal property shall be a lien upon the property assessed, which lien shall attach on the first Monday in January in each year and shall not be satisfied or removed until such taxes, penalties, charges and interest are paid or the property is finally vested in a purchaser under a sale for taxes, and that said lien shall be prior and superior to all other liens and encumbrances upon said property, except liens and encumbrances held by the State of Arizona. That it is further provided by said section, amended as aforesaid, that personal property shall be liable for taxes levied on real property and real property shall be liable for taxes levied on personal property, and that a judgment against real property for non-payment of taxes thereon or assessed to the personal property of the same person shall not be prevented by showing that the owner thereof was

possessed of personal property out of which the taxes could have been made.

That it was and is provided by Section 3070, Revised Code of Arizona, 1928, that the taxes due upon shares of banking corporations or associations shall be paid by such corporation or association and shall be a lien against and assessed to such shares of stock and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

[52]

That it was and is provided by Section 3112 of the Revised Code of Arizona, 1928, that the county treasurer may at any time after receiving the tax roll, collect by distraint and sale, if not otherwise collected, the taxes due on personal property; that the sale must be at public auction after one weeks' notice of the time and place thereof, and must be of a sufficient amount of the property issued to pay the taxes, fees and costs, and that on payment of the purchase price and the delivery of the property with a bill of sale thereof, title thereto vest in the purchaser.

That it was and is provided by Section 15 of Title 103 of Arizona Session Laws of 1931, that taxes upon real estate if unpaid, shall become delinquent, first half, on the first Monday in Novem-

ber, and second half, on the first Monday in May, of each year, and that it was and is provided by Section 17 of said Chapter 103, that all taxes shall bear interest from the time of delinquency at the rate of ten per cent per annum until paid, and a fraction of a month shall be counted as a whole month, and that it was and is further provided by Section 18 of said Chapter 103, that all real property upon which the taxes, including personal property taxes secured thereby are unpaid and delinquent, shall be subject to sale as in said chapter provided.

XXX.

That by virtue of the foregoing provisions of the statutes of the state of Arizona, the taxes levied and assessed upon plaintiff's shares of stock for the year 1935 in the manner aforesaid, whether legal or illegal, became payable on or before the fourth day of November, 1935.

Plaintiff in the year 1935, and at all times since, has owned and held real estate in all of the counties which are parties defendant to this suit, except Yavapai County. [53]

That many of the owners and holders of plaintiff's shares of stock owned and held during the year 1935, and now own and hold real estate in one or more of said counties, and that the aforesaid illegal taxes are an apparent lien or cloud upon the real estate owned by the plaintiff in the respective counties and upon the real estate of

the shareholders of the plaintiff in the respective counties as well as upon said shares of stock and that said shares of stock on said 4th day of November, 1935, became subject to seizure and sale for said taxes in the manner provided by the Statutes of Arizona above set forth. That by reason of the statutes above mentioned, plaintiff could not with safety to itself permit the transfer of shares of its stock on its books or pay dividends to its shareholders on its shares of stock and if it refused to permit such transfers or refused to pay any such dividends on account of the non-payment of said taxes by said shareholders, it might subject itself to numerous suits brought by its shareholders to compel such transfers or to recover damages for refusing to make such transfers or to pay dividends.

That it was impossible for plaintiff to determine from the assessments made in Pima and Graham counties whether the taxes imposed in said counties were imposed solely on plaintiff's shares of common stock or upon both common and preferred shares and if plaintiff assumed that said taxes were imposed upon both classes of stock, it was imposible to apportion the same between the common and preferred shares. Hence, if plaintiff paid said taxes as demanded by the treasurers of said two counties it would not know to which class of its share-holders to charge said payment, or if it charged the same to both classes, it would not

know what amount to charge to each, and if it attempted to secure reimbursement by withholding payment of dividends or refusing transfers of shares, it would [54] subject itself to a separate suit for damages by each of its shareholders.

That plaintiff, finding itself involved in the difficulties above mentioned, filed its original Bill of Complaint in this court before the fourth day of November, 1935, and prayed for the issuance of a temporary injunction restraining the defendants from proceeding to collect the taxes complained of; that after said complaint was filed, a stipulation was entered into by and between the plaintiff and the several defendants by which it was stipulated and agreed that the several defendant county treasurers would accept the amount of taxes theretofore tendered by the plaintiff to each of them without prejudice to their right to collect the remainder at any future time and that the plaintiff might withdraw its application for temporary injunction and that the said defendants would refrain from proceeding to enforce collection of the taxes alleged by plaintiff to be illegal during the pendency of this suit, but that said defendants or any of them should have the right at any future time to proceed to collect said taxes in the manner they thought proper and that if they did so proceed, or threaten to proceed, plaintiff should have the right to renew its application for temporary injunction. That said stipulation expressly pro-

vided that the rights of any party to prosecute or defend this suit should not be prejudiced or affected in any way by said stipulation, or anything done in pursuance thereof except in so far as said stipulation expressly provided therefor. That said stipulation was approved by an Order regularly made and entered by the court.

That on or about the 10th day of April, 1939, the County Treasurer of Pima County gave notice to the plaintiff that he would proceed to collect all of the taxes assessed in his county against plaintiff's shares of stock for the year 1935, [55] including those alleged to be illegal by the plaintiff, as well as those admitted to be legal.

That plaintiff is informed and believes and upon such information and belief alleges that said County Treasurer will proceed to collect such taxes in the manner provided by law unless restrained by the order of this court, and that by reason of the aforesaid action of the County Treasurer of Pima county, all of the defendants now renew their threat to enforce collection of the taxes hereby sought to be enjoined. That those county officers made parties defendant hereto who have come into office since filing the original Bill of Complaint continue the threat of their predecessors to enforce collection of said taxes, and that by reason of the aforesaid threats, plaintiff now renews its application for temporary injunction.

XXXI.

That it was and is provided by Section 3065, Revised Code of Arizona for 1928, that a taxpayer dissatisfied with the amount of his assessment as reviewed by the State Board of Equalization may appeal from said assessment to the Superior Court of the county where the taxes are payable; that the remedy of such appeal was and is not available to the plaintiff to relieve it from the burden of the illegal taxes herein complained of, for the following reasons:

1. That said appeal is by said Section 3065 limited to a determination of the full cash value of the property assessed, and does not give the party appealing the right to question the legality of the tax imposed or any part thereof.

2. That the judgment of the court on such appeal is by said Section 3065, limited to finding the full cash value of the property assessed and said judgment cannot provide for the elimination from the assessment of property illegally or wrong- [56] fully assessed.

3. That the valuations made by the county assessors of Pima and Graham counties sought to be reviewed herein by plaintiff, present an issue as to the proper division of the assets of plaintiff between each of said counties and the county of Maricopa, in which the principal office of plaintiff is situated, and that said issue cannot be considered or determined on such appeal.

That such appeal would have to be taken separately from the valuation made by each of the four counties to the Superior court of that county. The question of apportionment among said four counties would have to be determined separately in each of said counties without an opportunity for any county, except the one in whose Superior Court the particular suit was pending, to be heard on said question, with the result that there would probably be four different decisions and four different appeals to the Supreme Court, all of which would have to be determined without opportunity for the several counties to directly contest their respective contentions.

4. That no such appeal can be taken unless the appellant first pays to the said county treasurer the amount of taxes levied against his property, and unless so paid the appeal must be dismissed by the court, and there is no provision for the county treasurer withholding the disbursements of the money paid by appellant until the determination of said appeal and the judgment on the appeal, if in favor of the appellant, can only be a judgment against the county for the amount of the excess taxes paid and such judgment will be of little value to the plaintiff for the reasons hereinafter set forth.

5. That said appeal lies only to the Superior Court of the county in which the tax is assessed and is not available in a Federal Court; that such appeal is a judicial and not an [57] administrative remedy and plaintiff, under the constitution and

laws of the United States, is not obliged to resort thereto but may bring its action in a Federal Court of Equity.

XXXII.

That it was and is provided by Section 55 of Chapter 103 of Arizona Session Laws for 1931, that no person upon whom a tax has been imposed under any law relating to taxation shall be permitted to test the validity thereof either as plaintiff or defendant, unless such taxes shall first have been paid to the proper county treasurer together with all penalties thereon and that no injunction shall ever issue in any county or proceeding in any court against the state or against any county, municipality or officer thereof, to prevent or enjoin the collection of any tax levied.

That it was and is provided by the aforesaid Section 55, that after payment of taxes an action may be maintained to recover any tax illegally collected, and if the tax due shall be determined to be less than the amount paid, the excess shall be refunded in the manner "hereinbefore provided", but that said Chapter 103, Arizona Session Laws of 1931, wholly fails to provide in what manner said refund may be made.

That it was and is provided by Section 876 of the Revised Code of Arizona for 1928, that the treasurers of the several counties shall transmit to the state treasurer all money in the county treasury belonging to the state, or collected for it within ten

days after receipt of a letter from the State Treasurer to that effect.

That it was and is provided by Section 3107, Revised Code of Arizona for 1928, that the county treasurer shall pay to the treasurer of each City or Town in his county, on the first day of each month in each year, all money in his hands collected for the previous month on taxes for said city or town. [58]

That it was and is provided by Section 1029, Revised Code of Arizona for 1928, that the county treasurer shall receive and hold as a special fund all school moneys, and keep a separate account thereof, and when it is apportioned among the school districts, shall keep a separate account for each district, notify the County School Superintendent on the first of each calendar month of the amount of the county school fund and special district funds on hand in the treasury to the credit of such fund, and pay over on the warrants of the county school superintendent duly endorsed by the person entitled to receive the same, any or all such money.

That there is no provision in the laws of the state of Arizona requiring or permitting county treasurers to withhold from apportionment or distribution to the state or city or towns, or school districts, or other legal subdivisions therein, any tax money paid to them under protest or as a condition precedent to the appeal provided by Section 3065, Revised Code of Arizona for 1928, from the valuation fixed by the State Board of Equalization.

XXXIII.

That at the time of the filing of the original complaint in this cause there was no controlling decision by the courts of Arizona determining the nature of the judgment that should be rendered in a case to recover taxes paid under protest, under the provisions of Section 35 of Chapter 103, Arizona Session Laws of 1931. Plaintiff alleged in the original complaint that it might be held by the courts of Arizona that separate actions would be required to be brought against the county and the state and school districts, and the municipalities to which the taxes sought to be recovered had been distributed, and that if it were so held, it would be impracticable for plaintiff to pay the taxes and sue to recover the amount paid from the various [59] counties, school districts and municipalities, on account of the *municiplicity* of suits that would be required to be brought in such event. That since the filing of the original complaint in this cause, on or about the 10th day of October, 1935, the Supreme Court of Arizona construed Section 55 of Chapter 103 of the Session Laws of 1931 so as to give a taxpayer who had paid taxes under protest and sued to recover the same, an ordinary judgment against the county into whose treasury the money was paid by the taxpayer. Said court construed said Section 55 as not creating a trust fund of the tax moneys paid under protest, and as not requiring the county treasurer to withhold distribution of said tax moneys so paid under protest, and as not requiring said county treasurer to re-

fund the particular moneys paid to him, and further interpreted said Section 55 with other sections construed together therewith as giving to the taxpayer who had paid his taxes under protest merely the right to an ordinary judgment against the county on an equality with other general obligations of the county. As thus construed, said Section 55 gives to the taxpayer paying taxes under protest, if the taxes are shown to have been illegal, a judgment against the county, which it is the duty of the Board of Supervisors of the county to pay out of funds in the county treasury not otherwise apportioned, or, if there are no such funds, it becomes the duty of the Board of Supervisors to budget the judgment as a county expense and levy a tax to pay it. That the remedy as thus given to the taxpayer who pays illegal taxes under protest is wholly inadequate for the reason that if the plaintiff in this suit should pay the illegal taxes herein complained of under protest, and should sue to recover the same and obtain a judgment against the respective counties, it would be unable to realize on said judgments for the reason that there are no funds in the treasuries of the said counties not otherwise appropriat- [60] ed which can be applied to the payment of said judgments, and that the duty imposed upon the Board of Supervisors to include such judgments in the budget can be exercised only at the time provided by law for the making of the budget, to-wit, on or about the first Monday in August of each year. That provision for said budget is made

by Sections 3097 and 3098, Revised Code of Arizona for 1928, and by such sections, and by Sections 3093 and 3094, Revised Code of Arizona for 1928, providing for the levy of taxes, no allowance is made for delinquencies in collection, so that if the plaintiff should recover judgments for taxes paid under protest, against the several counties that are parties defendant to this suit, by virtue of the sections of the statute aforesaid, a levy would be made only for the amount of such judgments, without any allowance whatsoever for delinquencies in the collection of taxes.

That by reason of the existing financial depression, and the difficulty of collecting taxes in all of the counties which are parties defendant to this suit, a large percentage of the taxes levied becomes delinquent and remains uncollected for a period of years, and a large percentage of the taxes hereafter levied will become delinquent and remain uncollected for a period of years.

That plaintiff is advised and believes, and upon such information and belief alleges that in Maricopa County, in which the largest amount of illegal taxes which plaintiff seeks to enjoin are claimed to be payable, the percentage of unpaid taxes amounts to more than twenty-five per cent; and that in all probability such percentage of delinquency will continue for a number of years to amount to more than twenty-five per cent, and that by the provisions of Section 33, Chapter 103, of the Arizona Session

Laws of 1931, the proceeds of such delinquent taxes, when collected, are required to be distributed for the [61] purposes for which they were originally levied, (exclusive of penalties, which go to the general fund of the county) and the statutes of the state of Arizona make no provision for a further levy to cover delinquencies in collection of the original levy, and that for the last four sessions the legislature of the state of Arizona, has passed laws to a large extent remitting penalties on delinquent taxes. That it is provided by said Chapter 103, Session Laws of Arizona for 1931, that real property subject to the lien for taxes thereon, or for taxes on personal property assessed to the same owner, may be sold and when so sold is subject to redemption for a period of three years. That the taxing officials in the several counties who are parties defendant to this suit owing to the large amount of delinquent taxes therein, permit a period of time as long as five years to elapse before making such sales, and in some of the counties in which plaintiff is assessed for taxes, no sales for taxes have been made for several years, notwithstanding delinquencies in the payment thereof, and that if and when such sales are made there are usually no purchasers for said real estate and the same is and will continue to be struck off to the state of Arizona, and no money will be collected on account of such sales until the expiration of the period of redemption, which is three years from the date of the sale, and

that by reason of said provisions of the statutes of Arizona, and the existing financial depression, if plaintiff should pay the illegal taxes assessed against its shares and sue to recover the same from the respective counties it would probably be more than a year from the date plaintiff obtained judgment before it would receive any payment on said judgment, and it would be many years before it would receive payment of more than two-thirds of said judgment, and in all probability a large percentage of said judgment would never be paid at all for the reason that the full [62] amount of the levy for said judgment would in all probability never be collected, and by reason of the acts of the legislature heretofore passed and which will probably be passed hereafter, waiving the collection of penalties on delinquent taxes, there probably never will be sufficient unappropriated money in the treasury of said counties to pay said judgments in full.

That the illegal taxes against which plaintiff seeks relief in this cause are required to be paid to four different county treasurers, and there is no provision under the laws of Arizona by which one action or proceeding may be brought against the four counties, and therefore plaintiff would in all events be required to bring at least four separate actions to recover illegal taxes paid by it under protest. That the duty enjoined by law upon the Board of Supervisors to include judgments for illegal taxes paid under protest in the budget, and

to make a levy for said judgments if neglected by said Board of Supervisors is enforcible only by mandamus. That if said Board of Supervisors in each of said counties should neglect to include the judgments that might be recovered by plaintiff in their budgets, plaintiff would be required to bring four separate actions in mandamus against said Boards of Supervisors, after having brought four separate actions to recover judgments.

That by reason of the foregoing facts, plaintiff has the right to resort to a federal court of equity to enjoin the collection of said illegal taxes, to avoid the necessity of bringing a multiplicity of suits.

XXXIV.

That as appears from paragraphs numbered XIII and XIV of this Second Amended and Supplemental Bill of Complaint, the assessments made or attempted to be made on plaintiff's shares of stock in Pima and Graham counties, are based upon a valuation [63] of the physical properties owned and held by plaintiff in said counties. That plaintiff is advised and believes, and upon such information and belief alleges that the taxing officials of said counties take the position and will assert in any proceeding to recover taxes assessed by them from plaintiff that under the provisions of Section 3071, Revised Code of Arizona for 1928, they have the right to value plaintiff's shares of stock at an amount not less than the actual cash value of the real and personal property of the plaintiff situated

in their respective counties, and that said defendants will attempt to justify the assessments made by them upon the real and personal property of the plaintiff in the said counties of Pima and Graham as being a valuation of the shares of stock of plaintiff, in an amount equal to the actual cash value of the real and personal property of the plaintiff situated in said counties, and that said taxing officials will assert in this suit, and will assert in any suit involving the collection of taxes from plaintiff for said counties, that the valuation of plaintiff's shares of preferred stock must be apportioned to Maricopa County, the county in which plaintiff's principal banking house is situated, and that the taxing officials of Maricopa County do assert, and will assert in this suit, or in any suit involving the collection of the taxes imposed by them upon the plaintiff that a proper proportion of plaintiff's shares of preferred stock must be apportioned to the several counties in which the plaintiff has branches, and that if the plaintiff should pay the taxes assessed against it in the several counties involved in this suit, and should seek to recover that portion of the taxes imposed on account of its preferred stock by separate suits against each of the several county treasurers of said counties, the defense will be made to the suits filed to recover the excessive amount of said taxes in Pima and Graham counties [64] that there was an improper apportionment of the taxable valuation of plaintiff's property as between

Maricopa County and each of said counties of Pima and Graham an issue which could not be determined in separate suits to recover the taxes paid, nor in any suit except a proceeding in equity to which the taxing officials of said counties of Maricopa, Pima and Graham are made parties.

That subsequent to the filing of the original complaint in this cause, at the time fixed by law for assessing taxes for the year 1937, the taxing officials of the several counties, parties hereto, and of other counties in the State of Arizona in which plaintiff has branches, assessed taxes for the year 1937 upon plaintiff's shares of stock; that all of such assessments were reviewed at the proper time by the State Board of Equalization; that said Board eliminated all values represented by plaintiff's preferred stock from such assessments for said 1937 taxes, except that in the case of Pima County the assessment was again made for an amount equal to the full value of the tangible, real and personal property owned by the plaintiff and situated in that county, said Pima county thus again assessing values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and said State Board of Equalization thus again declined to eliminate said values from said assessment and said Pima county imposed a tax of approximately $11,400.00 on values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation. Plaintiff did not

appeal from the action of said Board of Equalization under Section 3065, Revised Code of Arizona for 1928, but paid the full tax assessed, under protest, and sued to recover said sum of $11,400.00 from Pima county, or, in the alternative, if Pima county's method of assessment should be found correct by the [65] court, to recover said sum pro rata from the other counties to which it was paid.

The trial court held that the plaintiff's exclusive remedy provided by the State Law was by appeal to the Superior Court of the county, under Section 3065, Revised Code of 1928, and that plaintiff had no remedy to pay the tax under protest and recover the same under Section 55, Chapter 103, Session Laws of 1931; that there is no decision by the Supreme Court of Arizona authoritatively passing upon the question. Said Supreme Court has once said by way of dictum that the remedy provided by Section 55, Chapter 103, Session Laws of 1931, is available only when the tax is assessed under an unconstitutional law, and again it has said by way of dictum that the remedy provided by Section 55, Chapter 103 Session Laws of 1931, is available whenever no other remedy is provided by law. There being conflicting declarations by it, said Supreme Court does not consider itself bound by either expression and deems the question wholly open for future decision.

XXXV.

That by reason of the foregoing facts, plaintiff has no adequate remedy by payment of the illegal

taxes, and suing to recover the same, and is entitled to maintain this suit in equity for the purpose of preventing a multiplicity of suits, and to obtain an adjudication of the proper apportionment of taxes between the several counties parties hereto.

XXXVI.

That by reason of the provisions in the statute of the state of Arizona hereinbefore alleged, prohibiting the issuance of an injunction to prevent the collection of illegal taxes, plaintiff is without remedy in the courts of the state of Arizona, and has no remedy except in the United States District Court for the District of Arizona. [66]

XXXVII.

That the plaintiff has exhausted all administrative remedies available to it under the statutes and laws of the state of Arizona.

XXXVIII.

That by reason of all the matters and things hereinbefore alleged, plaintiff, unless granted the relief herein prayed for, will suffer great and irreparable damage and injury, and will be subjected to a multiplicity of suits, and has no plain or adequate remedy at law.

XXXIX.

That at the time of the filing of the original complaint in this cause, plaintiff was advised by its counsel and believed in good faith that the consti-

tution and laws of the United States secured to plaintiff and its shareholders immunity from taxation by or under the authority of the state on its shares of preferred stock hereinbefore described, and on the assets represented by said preferred stock, said assets being acquired by and from the money paid to it by the Reconstruction Finance Corporation of the United States of America, as the purchase price of said preferred stock, and that in said original complaint plaintiff, on behalf of itself and as the agent and trustee of its shareholders, expressly claimed such immunity.

That plaintiff in said original complaint further claimed immunity from such taxation under the exemption granted to said property by Section 2 of Article IX of the Arizona Constitution hereinbefore set forth, and likewise claimed that the taxes sought to be enjoined by it in said original complaint were illegal and void, because of discrimination against it made by the assessing officers in violation of the Constitution of Arizona, and the Act of Congress permitting and limiting the taxation of shares of stock of national banks. [67]

That after the filing of the original Bill of Complaint in this cause, to-wit, on or about the 3rd day of February, 1936, the Supreme Court of the United States determined and decided that the immunity from taxation under the Constitution and laws of the United States of the shares of preferred stock of National banks held by the Reconstruction Finance Corporation, had been waived by the Con-

gress of the United States giving its consent to the taxation of shares of stock of national banks.

That while said original complaint remained pending on plaintiff's claim of the exemption of the taxes sought to be enjoined under Section 2 of Article IX of the State Constitution, and plaintiff's claim of discriminatory assessment violating the Constitution of the State of Arizona, and plaintiff's claim of the violation of the Acts of Congress permitting and limiting the assessment of shares of stock of national banks on or about the 20th day of March, 1936, the Congress of the United States passed an act which was signed by the President on the same day, expressly declaring that preferred stock of national banks held by the Reconstruction Finance Corporation of the United States, should be exempt from all taxes, whether theretofore or thereafter assessed or levied. That the major portion of the taxes, the collection of which the plaintiff seeks to enjoin in this case, falls clearly within the terms of said last mentioned Act of Congress as taxes theretofore assessed and levied, and which have not been paid. That the Reconstruction Finance Corporation, the holder of the shares of preferred stock of the plaintiff against which the major portion of the taxes herein sought to be enjoined has been levied, immediately gave notice to the plaintiff to refuse payment of all taxes heretofore or hereafter assessed or levied against the preferred stock of the plaintiff owned and held by the Re-

construction Finance Corporation. That the whole [68] of the $1,240,000.00 par value of the shares of stock attempted to be assessed for taxes as hereinbefore alleged, is and at all times hereinafter mentioned has been owned by said Reconstruction Finance Corporation. That under the provisions of Sections 3069 and 3070, of the Revised Code of Arizona, and also under the decision of the Supreme Court of the United States, made February 3, 1936, the major portion of the illegal taxes, the collection of which is sought to be enjoined in this case, is levied and assessed upon the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation, and is payable only by the plaintiff as the statutory agent for such preferred shareholder, and if plaintiff pays such taxes, the same cannot be deducted from its general assets, nor can the same be deducted from the dividends to its common shareholders, but under the said Sections 3069 and 3070, of the Revised Code of 1928, the same are required to be deducted from the dividends on the preferred stock of the Reconstruction Finance Corporation.

That under the provisions of the Act of Congress, which became a law on March 20, 1936, the Reconstruction Finance Corporation is precluded from permitting the plaintiff to deduct said taxes from the dividends payable on the preferred stock held by it.

That the plaintiff is informed and believes, and upon such information and belief states that the waiver

of the exemption from taxation of the property owned and held by an instrumentality of the United States, such as the Reconstruction Finance Corporation, is within the control of congress and can be granted or withheld at the pleasure of congress, and that when the privilege theretofore extended to the several states and the counties and municipalities thereof to tax such shares of preferred stock owned and held by such instrumentality of [69] the United States was withdrawn by congress as to all taxes, whether theretofore or thereafter levied or assessed, the effect of the withdrawal of such privilege was to prevent and preclude absolutely the payment of any such taxes by the Reconstruction Finance Corporation, and that plaintiff is further informed and believes, and upon such information and belief states that said Act of Congress is valid, both as to taxes hereafter to be levied and assessed and taxes heretofore levied and assessed, and that if plaintiff is required to pay said taxes to the respective counties which are parties defendant hereto as the agent of the Reconstruction Finance Corporation, as its preferred shareholder, it will be unable to reimburse itself for such payment from the Reconstruction Finance Corporation, and that by reason of the foregoing facts the collection of said taxes on its preferred shares of stock will compel the plaintiff to pay out of its own funds, taxes assessed against the property of another in contravention of the due process clause of the constitu-

tion of the United States and the constitution of the state of Arizona, and that plaintiff herein and hereby expressly claims the right, privilege and immunity under the constitution and laws of the United States, of not being subjected to the payment of such taxes of its preferred shareholder, which it will be unable to collect from such shareholder.

Wherefore, plainitff prays:

1. That the assessment of plaintiff's said shares of stock, and the assessment of property owned and held by the plaintiff, made by the county assessors of the several counties parties hereto, for the purpose of state, county, school district and other local taxation, (except City of Phoenix taxes) for the years 1935, as aforesaid, be decreed to be illegal and void and without any force or effect whatsoever, and to be in [70] violation and contravention of the constitution and laws of the United States and the constitution and laws of the State of Arizona.

2. That the said taxes so levied and assessed upon plaintiff's said shares of stock, or upon property owned and held by the plaintiff for the year 1935, for state, county, school district and other local taxation, (except city of Phoenix taxes) set forth, be decreed to be wholly illegal and void. That any taxes which may hereafter be levied or assessed upon plaintiff's shares for said purposes for the year 1935, and based and computed upon said illegal and void assessment, likewise be decreed to be wholly illegal and void.

3. That the apparent lien resulting, and any apparent lien which may hereafter result from the levy and assessment of said taxes on plaintiff's said shares of stock, or on property owned and held by the plaintiff as aforesaid, be decreed to be wholly illegal and void, and without any force or effect whatsoever.

4. That the respective county treasurers, defendants herein, be directed to receive and accept from the plaintiff the respective sums of money heretofore offered and tendered to them, or such other sums as the court may find to be justly due and owing from the plaintiff and its shareholders to said county treasurers for taxes for the year 1935, levied or assessed against plaintiff's said shares of stock, or property owned and held by the plaintiff for state, county, school district and local taxes, for the year 1935, in full satisfaction as and for taxes levied and assessed for said purposes against plaintiff's said shares of stock for the year 1935.

5. That it be adjudged and decreed that plaintiff's shares of preferred stock, and property of the plainitff represented thereby, is wholly immune and exempt from taxation by [71] or under the authority of the State of Arizona, so long as said shares of preferred stock are owned and held by the Reconstruction Finance Corporation of the United States of America.

6. That if this court should be of the opinion that the Act of Congress adopted March 20, 1936,

withdrawing the privilege of taxing shares of preferred stock of national banks owned and held by the Reconstruction Finance Corporation from the several states, cannot be given effect as against taxes levied and assessed prior to the adoption of said Act, that in that event this court order and decree that until it be adjudged and determined by the court of last resort that said taxes against the shares of preferred stock held by the Reconstruction Finance Corporation are collectible from said corporation, plaintiff be protected against the collection thereof by the respective county treasurers who are parties to this suit, upon the ground that to compel the plaintiff to pay the obligation of another, when its right to reimburse itself for the payment from the true debtor is doubtful, will be to deprive the plaintiff of its property without due process of law, and that on said ground the collection of said taxes be enjoined until the proper construction and effect of said Act of Congress be finally determined.

7. That a temporary and interlocutory injunction issue out of and under the seal of this court, directed to the defendants, and each of them, commanding them and each of them, and each of their deputies, assistants, agents, servants, employees, attorneys, and successors in office, to desist from collecting or attempting to collect the whole or any part of said illegal and void taxes so levied or assessed, or which hereafter may be levied or assessed upon plaintiff's shares of stock, or upon property

owned and held by the plaintiff for the year 1935, as aforesaid, or any penalty or interest thereon, [72] either by distraint or sale, or by suit or sale, or issuance of delinquent tax certificates or otherwise, and to desist from instituting, conducting or causing to be instituted or conducted, any proceedings to enforce the payment of the whole or any part of said illegal or void taxes, or of said penalties, charges or interest, or to enforce or foreclose any apparent lien resulting from the levy and assessment of said taxes as aforesaid, or from advertising or offering plaintiff's said shares, or any part thereof, for sale for the purpose of collecting or attempting to collect said taxes, penalties, charges or interest, or from issuing or delivering any tax certificate or certificates to any pretended purchaser or purchasers of said property, or any part thereof, or otherwise, by reason of or resulting from said illegal or void taxes so levied or to be levied as aforesaid, and from assessing or pretending to assess or to approve the assessment of plaintiff's said shares for the purpose of state, county, school district and other local taxation in the year 1935, or in any similar manner, or any similar method, and from levying or assessing upon or against plaintiff's said shares in the year 1935, or in any succeeding year, any tax or taxes based or computed upon any such pretended assessment, and from collecting or attempting to collect any such taxes, said temporary or interlocutory injunction to remain in full force and effect until the final hearing of this

cause; that upon said hearing, said injunction be made permanent.

8. That plaintiff have such other and further relief as the nature of the case may require, and as to the court may seem meet and equitable, and also a decree for its costs herein.

J. L. GUST
CHARLES W. RAWLINS
GUST, ROSENFELD, DIVELBESS,
ROBINETTE & COOLIDGE
RAWLINS & RAWLINS
Solicitors for Plaintiff [73]

State of Arizona,
County of Maricopa—ss.

J. L. Gust, being first duly sworn on oath deposes and says:

That he is one of the attorneys for The Valley National Bank, of Phoenix, a corporation, the plaintiff named in the above and foregoing Second Amended and Supplemental Bill of Complaint, and is duly authorized to make this verification on behalf of said plaintiff;

That he has read said complaint, and that the allegations therein contained are true of his own knowledge, except such allegations as are made upon information and belief, and those allegations he believes to be true.

J. L. GUST

Subscribed and sworn to before me this 24th day of April, 1939.

(Seal) ETHOL FROST
Notary Public

My commission expires Feb. 27, 1940.
(Notarial Seal)

[Endorsed]: Received a copy of within this 24 day of April, 1939. Leslie C. Hardy, Attorneys for Defts. Maricopa County etc. Allan K. Perry for Tax Commission.

[Endorsed]: Filed Apr. 24, 1939. Edward W. Scruggs, Clerk United States District Court for the District of Arizona. By Helen Stroup, Deputy Clerk. [74]

[Title of District Court and Cause—E-350.]

ORDER GRANTING LEAVE TO FILE AMENDED AND SUPPLEMENTAL COMPLAINT

Application having been made to this court for leave to file an amended and supplemental complaint, accompanied by a copy of said proposed amended pleading, leave is hereby granted to plaintiff to file said amended and supplemental complaint and the same is hereby directed to be filed with the clerk forthwith;

And, it appearing that certain of the county officials who are named as parties defendant to the original complaint have ceased to hold office and

that by the amended and supplemental complaint their successors are made parties defendant, it is ordered that said successor defendants be allowed fifteen (15) days from the date of notice of their said substitution as parties defendant to object thereto.

Dated this 24 day of April, 1939.

DAVE W. LING
Judge [75]

[Title of District Court and Cause—No. 350.]

AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT

(For Injunction Against Collection of Taxes)

[76]

Comes now the above named plaintiff, and for its Amended and Supplemental Bill of Complaint against the above named defendants, alleges:

I.

That plaintiff is, and was at all times herein mentioned, a corporation, duly incorporated as a national banking association under the laws of the United States of America, and authorized to do a banking business in the State of Arizona, having its principal banking house at Phoenix, Maricopa County, Arizona, and branches in other cities and towns in the County of Maricopa, and in cities and towns in the counties of Pima, Graham, Mohave, Gila, Greenlee, Pinal and Yavapai.

Plaintiff brings this suit in its own behalf and in behalf and as the agent of the holders of its common stock.

That the defendants, Maricopa County, Pima County, Graham [77] County, Yavapai County, and Gila County, each are and at all times herein mentioned, were duly organized and existing counties of the State of Arizona, and political subdivisions of said state;

That Harry M. Moore is a citizen and resident of Maricopa County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint he has been succeeded in said office by Ed. Oglesby, a citizen and resident of said Maricopa County, and that said Ed. Oglesby is now the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Maricopa County, and is sued herein as such officer, having been duly substituted as a party defendant in place of the said Harry M. Moore;

That the defendant, J. D. Brush, is a citizen and resident of Maricopa County, Arizona, and is the duly elected, qualified and acting County Assessor of said County, and is sued herein as such officer;

That the defendants C. W. Peterson, John A. Foote and Geo. Frye, are citizens and residents of Maricopa County, Arizona, and are now and at all times herein mentioned were the duly elected, quali-

fied and acting members of and have constituted and do now constitute the Board of Supervisors of said Maricopa County and the County Board of Equalization of said county;

That Daniel E. Garvey is a citizen and resident of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said County; that since the filing of said original complaint, Wallace Bransford, a citizen and resident of Pima [78] County, Arizona, has succeeded said Daniel E. Garvey as County Treasurer and Ex Officio Tax Collector of said county, and is sued herein as such officer, having been legally substituted as a party defendant in said cause in place of the said Daniel E. Garvey;

That the defendant Charles M. Taylor, is a citizen and resident of Pima County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer.

That Warren A. Grossetta, R. H. Martin and J. B. Mead, are citizens and residents of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of the Board of Supervisors of said Pima County and the Board of Equalization of said county;

That since the filing of the original complaint in this cause, Thomas Collins, a citizen and resident

of Pima County, Arizona, has been duly elected a member of the Board of Supervisors of Pima County, Arizona, to succeed Warren A. Grossetta, and that said Thomas Collins, R. H. Martin and J. B. Mead do now constitute the Board of Supervisors of Pima County, Arizona, and are sued herein as such officers, the said Thomas Collins having been substituted as a party defendant in place of Warren A. Grossetta;

That Charles M. Geitz was a citizen and resident of Graham County, Arizona, and was the duly elected, qualified and acting County Treasurer and Ex-Officio Tax Collector of said county at the time of the filing of the original complaint in this cause; that since the filing of the original complaint in this cause Earl M. Lines has succeeded the said Charles M. Geitz as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county and is sued herein [79] as such officer, having been substituted as a party defendant in place of said Charles M. Geitz.

That the defendant, Alvin Goodman, is a citizen and resident of Graham County, Arizona, and is the duly elected, qualified and acting County Assessor of said County, and is sued herein as such officer;

That J. W. Greenhalgh, Glen Hoopes and Virgil McEuen, are citizens and residents of Graham County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of and con-

stituted the Board of Supervisors of said Graham County, and the County Board of Equalization of said county;

That since the filing of the original complaint in this cause, Ernest D. Householder and M. E. Dubois, citizens and residents of Graham County, Arizona, have succeeded J. W. Greenhalgh and Virgil McEuen as members of the Board of Supervisors of said Graham County, and the said Glen Hoopes, Ernest D. Householder and M. E. Dubois now constitute the Board of Supervisors of said Graham County and the Board of Equalization of said County, and are sued herein as such officers, the said Ernest D. Householder and M. E. Dubois having been substituted as parties defendant in place of J. W. Greenhalgh and Virgil McEuen;

That David H. Biles was a citizen and resident of Yavapai County, Arizona, and the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said County at the time of the filing of the original complaint in said cause; that said David H. Biles has been succeeded as such County Treasurer and Ex Officio Tax Collector by Pearl Bethea, a citizen and resident of Yavapai County, Arizona, and that the said Pearl Bethea now is the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county, [80] and is sued herein as such officer, having been substituted as a party defendant in place of David H. Biles;

That C. H. Riebeling was a citizen and resident of Yavapai County, Arizona, at the time of the

filing of the original complaint in this cause and was the duly elected, qualified and acting County Assessor of said County; that since the filing of the original complaint in this cause, David H. Biles, a citizen and resident of Yavapai County, Arizona, has succeeded C. H. Riebeling as County Assessor of Yavapai County, Arizona, and is sued herein as such officer, having been substituted as a party defendant in place of the said C. H. Riebeling;

That at the time of the filing of the original complaint in this cause, W. M. Byers, T. B. Jones and C. C. Jackson were citizens and residents of Yavapai County, Arizona, and were the duly elected, qualified and acting members of and constituted the Board of Supervisors of Yavapai County, Arizona; that since the filing of the original complaint in said cause, T. B. Jones was succeeded as a member of the said Board of Supervisors of Yavapai County by R. W. Wingfield, a citizen and resident of Yavapai County, Arizona; that said W. M. Byers, C. C. Jackson and R. W. Wingfield now constitute the duly elected, qualified and acting members of the Board of Supervisors of Yavapai County, Arizona, and are sued herein as such officers, the said R. W. Wingfield having been made a party defendant in place of T. B. Jones;

That at the time of the filing of the original complaint in this cause, Frank H. Thomas was a citizen and resident of Gila County, Arizona, and was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said County; that

since the filing of the original complaint in this cause, E. S. Bryant, a citizen and resident of Gila County, Arizona, has succeeded the said Frank H. Thomas as the duly [81] elected, qualified and acting County Treasurer of Gila County, Arizona, and is sued herein as such officer, having been made a party defendant in place of the said Frank H. Thomas;

That the defendant, W. G. Duncan is a citizen and resident of Gila County, Arizona, and at all times herein mentioned was and is now the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

That the defendants, John H. Armer, Charles Curnow and L. F. Quinn, are citizens and residents of Gila County, Arizona, and are now and at all times herein mentioned were the duly elected, qualified and acting members of and have constituted and do now constitute the Board of Supervisors of said Gila County, and the County Board of Equalization of said County;

That the defendants, Frank Luke, Thad M. Moore and D. C. O'Neil, are residents of Maricopa County, Arizona, and are now and at all times herein mentioned have been the duly elected, qualified and acting members of and have constituted, and do now constitute the State Tax Commission and State Board of Equalization of the State of Arizona.

II.

That this is a suit of a civil nature, in equity, arising under the Constitution and laws of the

United States, and that the amount involved herein, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

III.

That the plaintiff now exercises, and from and since the 11th day of February, 1935, has exercised in the City of Phoenix, and the Cities of Glendale and Mesa, in Maricopa County, Arizona, in the city of Tucson and the Town of Ajo, [82] in Pima County, Arizona, in the town of Safford, Graham County, Arizona, in the city of Kingman, Mohave County, Arizona, and in the cities of Globe and Miami, and town of Hayden, in Gila County, Arizona, in the town of Clifton, Greenlee County, Arizona, in the towns of Superior, Coolidge and Casa Grande, in Pima County, Arizona, and in the city of Prescott, Yavapai County, Arizona, normal banking powers conferred upon it by law as a national banking association; including the receiving of commercial deposits, demand and time savings deposits, evidenced by certificates of deposit, the purchase and sale of government, state and municipal bonds, the maintenance of a Trust Department, the purchase and discount of commercial paper, the loaning of money on financial statements, and upon collateral security, and upon real estate and chattel mortgages executed to the plaintiff or assigned to and deposited with it as collateral security, and the investment of money in notes, bonds and mortgages and other securities, and evidences of indebtedness.

IV.

That it was and is provided by Section 1, of Article IX of the Constitution of the State of Arizona, that all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.

That it was and is provided by Section 3068, Revised Code of Arizona for 1928, that all taxable property within said state must be assessed at its full cash value, and that the term, "full cash value", shall mean the price at which property would sell if voluntarily offered for sale by the owner thereof upon such terms as such property is usually sold, and not the price that might be realized if such property were sold at a forced sale.

That it was and is provided by Section 3069, Revised [83] Code of Arizona for 1928, as amended by Chapter 110, Session Laws of Arizona for 1931, that the property of corporations shall be assessed and taxed, and no assessment shall be made on shares of stock of corporations, nor shall any holder thereof be taxed for such shares, but that said provisions with reference to the taxing of shares of stock shall not apply to banking corporations, building and loan associations or corporations, and corporations or associations engaged in the business of using money wherewith to make money for the owners of their shares, and that the shares of stock of such banking corporations, and other corporations and associations shall be assessed and taxed as other property in the name of the shareholders of the several shares

thereof, to be entered and taxed in the name of and be payable by such corporation or association.

V.

That it was and is provided by Section 11, of Article IX of the Constitution of Arizona, that the manner, method and mode of assessing, equalizing, and levying taxes in the State of Arizona, shall be such as may be prescribed by law.

That it was and is provided by Section 3074, Revised Code of Arizona, 1928, that between the first Monday in January, and the first day of May, of each year, the County Assessor, (except as otherwise required by the State Tax Commission) shall ascertain by diligent inquiry and examination all property in his county subject to taxation, the names of all persons owning, claiming, or having possession or control thereof, determine the full cash value of all such property, and list and assess the same to the person owning, claiming or having the possession, charge, or control thereof.

That it was and is provided by Section 3070, Revised Code of Arizona for 1928, that upon the demand of the Assessor the officers in charge of any banking corporation or association [84] engaged in the business of using money wherewith to make money, shall make out and deliver to said assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares owned by him, the surplus, reserve fund and undivided profits, and the par and

market value of the shares, and that the full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return to any officer of the state or the United States, from actual sales of the stock; or from other trustworthy sources, and that every such shareholder shall, where such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein, and if the shareholder fail to do so the assessor shall list and assess such unrendered shares as other unrendered property, and that the taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3071, Revised Code of Arizona for 1928, that every such corporation or association for the purpose of said assessment shall be considered as located in every county, city or town wherein it has an office for the purpose of carrying on its business, and the shares shall be subject to taxation in any county, city or town wherein it has such office, that the officer of such corporation or association shall state in his statement if his association or corporation is

subject to taxation in more than one county, city or town, and the proportion of its assets [85] situated in each thereof, and that the shares of such corporation or association shall be taxed in each county, city or town, for only such portion of their value as the assets situated in that county, city or town bear to the assets of the entire corporation or association, and that when a bank maintains branches or conducts business in more than one county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches are maintained or business conducted, and the amount apportioned to each county, city or town shall not be less than the actual cash value of the real and personal property of such bank situated in such county, city or town.

VI.

That on the 11th day of February, 1935, the day plaintiff engaged in the banking business as a national bank, the amount of its common capital stock was $260,000.00, its surplus was $260,000.00, its undivided profits were $90,026.52, making a total as a basis for the valuation of its shares of common stock of $610,026.52. That its common capital stock consisted of 52,000 shares, of the par value of $5.00 each. That to provide the plaintiff with sufficient capital to enable it to comply with the laws and regulations pertaining to national banks in the acquisition and transaction of the banking business

which it acquired on said 11th day of February, 1935, the Reconstruction Finance Corporation of the United States of America purchased from the plaintiff, and the plaintiff sold to said Reconstruction Finance Corporation, $1,240,000.00 par value of its preferred stock. That said preferred stock so issued and sold to said Reconstruction Finance Corporation consisted of 198,400 shares of the par value of $6.25 each, and that all of said preferred stock was issued to said [86] Reconstruction Finance Corporation on or prior to said 11th day of February, 1935, and ever since the issuance thereof has been and now is owned and held by and is the property of the Reconstruction Finance Corporation of the United States of America.

VII.

That on the first day of January, 1936, the amount of the common capital stock of plaintiff was $260,000.00, its surplus was $260,000.00, and its undivided profits were $101,367.14, making a total as the basis for the valuation of its common stock of $621,367.14. That on said date its common capital stock consisted of 52,000 shares of the par value of $5.00 each, and that the amount of its capital stock, surplus, and undivided profits, and the valuation of its shares of common stock, and the number of said shares remained substantially the same as it was on the first day of January, 1936, until after the first Monday in May, 1936.

VIII.

That on or about the 24th day of March, 1936, and prior to the first day of May, 1936, an officer of the plaintiff, duly authorized for said purpose, made and delivered a statement such as is provided for by Sections 3070 and 3071, Revised Code of Arizona for 1928, to each of the assessors of the respective counties in which its main office, or any of its branches was situated, including all of the counties made parties defendant to this suit. That each of said statements showed the number of plaintiff's shares, the names and residences of each shareholder owning and holding the shares of its common stock, and the shares of its preferred stock above mentioned, the number of shares owned by each shareholder, the amount of capital, surplus and undivided profits as above stated, and the par value of its shares, both common and [87] preferred, as is required by Section 3071, Revised Code of Arizona for 1928. Each of said statements showed the proportion of plaintiff's assets situated in each of the counties in which its principal office or a branch thereof was situated. That said statement showed the common capital stock of the plaintiff was $260,000.00, that its surplus was $260,000.00, and that its undivided profits were $101,367.14, making a total as a basis for the valuation of its common capital stock of $621,367.14. That said statement also showed that the following percentages of said amount were properly apportioned to the respective counties as follows, to-wit: Maricopa County, 63.54

per cent. Pima County, 16.88 per cent, Graham County, 2.73 per cent, Yavapai County, 2.92 per cent, Gila County, 7.26 per cent, Pinal County, 2.90 per cent, Greenlee County, 1.86 per cent, Mohave County, 1.91 per cent.

IX.

That the tax statutes hereinabove set forth, as now in force in the state of Arizona, have been the governing tax laws of the state of Arizona for many years, and that for many years immediately prior to the year 1934, it was the universal practice followed by the County Assessors of the several counties of the state of Arizona, and approved by the Tax Commission of the state of Arizona, to value for tax purposes the shares of stock of each of the banks in the State of Arizona, at an aggregate amount equal to the capital stock, surplus and undivided profits of each of said banks, as shown by the books of said bank, and that in the year 1934, all or substantially all of the banks in the state of Arizona protested to the State Tax Commission of the state of Arizona, sitting as a State Board of Equalization, against the valuation of their shares of stock on said basis, for the reason that the same constituted an assessment of the capital stock of said [88] banks at its full cash value, when other classes of property in said state, in pursuance of a general understanding among the tax officials of the state were assessed at an amount equal to 60% of their cash value, and that in the consideration

of said protests, said State Tax Commission, sitting as a Board of Equalization, in the year 1934, made a thorough examination of the valuation of shares of bank stock in the state of Arizona, and after such examination ordered that shares of bank stock should be valued by the following method: (1) That the statements filed by said banks should be revised and corrected by the use of the best information available; (2) That the shares of stock should be valued at 75% of the capital stock, surplus and undivided profits as shown by said revision of the banks statement. That said Tax Commission made no determination with reference to the taxability of shares of preferred stock of banks owned and held by Reconstruction Finance Corporation, and expressly left that question to be determined by the courts.

X.

Plaintiff is informed and believes, and upon such information and belief states that the State Tax Commission of the state of Arizona, said State Tax Commission consisting of the same individuals as the State Board of Equalization, in the exercise of its supervisory powers over the County Assessors of the State of Arizona, directed and instructed the County Assessors of the several counties of the state of Arizona to value for tax purposes for the year 1935, the shares of stock of all banks in the state, by the method adopted by it in the year 1934, which is set forth in Paragraph IX hereof, and that the county assessors of the several counties

of the state, (except the County Assessor of Mohave county), in pursuance of said instructions of said State Tax Commission, valued for [89] tax purposes for the year 1935, the capital stock of all banks in their respective counties at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks, as shown by the statements filed by said banks.

XI.

That plaintiff is informed and believes, and upon such information and belief states that the State Tax Commission of the state of Arizona, said Tax Commission consisting of the same individuals as the State Board of Equalization, who are parties defendant to this suit, issued no instructions to the several county assessors of the state as to the method by which shares of stock of banks should be valued in said year of 1936, and that as a result of the failure of said Tax Commission to issue such instructions, certain of the County Assessors valued bank stock in their respective counties substantially in accordance with the instructions issued by the Tax Commission in the year 1935; that is to say, at 75% of the amount of the capital stock, surplus and undivided profits of said banks, and others of said County Assessors valued the capital stock of the banks situated in their counties, at an amount equal to the full value of the capital stock, surplus and undivided profits of said banks, as shown by the books of said banks. That plaintiff is informed

and believes, and upon such information and belief states that the capital stock of no bank other than the plaintiff was valued for tax purposes for the year 1936 at an amount in excess of 75% of the capital stock, surplus and undivided profits of said bank, the counties in which the capital stock of the banks therein was valued at the full amount of the capital stock, surplus and undivided profits, in the year 1936, being counties in which no bank except the plaintiff was doing business, excepting Maricopa County, in which the valuation of the shares of stock of all [90] banks therein was reduced to 75% of the capital stock, surplus and undivided profits by the State Board of Equalization, as hereinafter set forth.

XII.

That in pursuance of a general plan and understanding among the taxing officials of the state of Arizona, including the members of the State Board of Equalization who are parties to this suit it has been the practice of the taxing officials of the state of Arizona for many years to assess property in the state of Arizona generally, at an amount equal to approximately 60% of its full cash value, and that said practice, in pursuance of said general plan and understanding among said taxing officials, was continued and followed in the year 1936, and was approved by the State Board of Equalization in the year 1936.

XIII.

That the county assessors of Greenlee, Mohave and Pinal counties valued the shares of common stock of the plaintiff for the year 1936, as personal property on a basis reasonably satisfactory to the plaintiff and its shareholders, and that the plaintiff paid said taxes as a personal property assessment, and that by reason of such payment the amount of taxes collectible from the plaintiff and its shareholders for 1936 taxes in said counties has been determined.

XIV.

That the County Assessor of Maricopa County, made his valuation of the plaintiff's shares of stock for tax purposes for the year 1936 in the manner following: He added together the amount of the common capital stock, surplus and undivided profits shown by the statement filed with him by plaintiff as aforesaid, and added to the amount so arrived at the sum of $1,240,000.00, being the par value of the preferred stock of [91] the plaintiff, issued to and owned and held by the Reconstruction Finance Corporation, as hereinbefore alleged, the total so arrived at being the sum of $1,861,367.14. Said County Assessor then took 63.54 per cent of said sum, (said 63.54 per cent being the percentage shown by the statement filed with him by the plaintiff as the percentage properly apportioned to Maricopa County) thus arriving at $1,182,712.68, as the amount apportioned to Maricopa County, which sum said assessor placed on the tax roll as the

assessable value of plaintiff's shares of stock for tax purposes for the year 1936, in said Maricopa County. That of the aforesaid valuation of $1,182,712.68, 63.54 per cent of the sum of $1,240,000.00, or $787,896.00 was and is the valuation placed by said County Assessor upon Maricopa County's proportion of the shares of preferred stock of the plaintiff, owned and held by the Reconstruction Finance Corporation.

XV.

That the County Assessor of Pima County valued the shares of stock of the plaintiff in his county in the year 1936 by placing a valuation on the several items of tangible real and personal property owned and held by the plaintiff in said county, and totaling said valuations of said items of real and personal property and taking said total as the actual cash value of that portion of the capital stock of the plaintiff assessable in Pima County. That the valuation so arrived at by said County Assessor of Pima County was and is $318,510.00.

That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If said valuation is construed as imposed upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessible in Pima [92] county of $6.215 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of $36.78 per share.

That $400,000.00 worth of the $1,240,000.00 worth par value of plaintiff's preferred stock was purchased from plaintiff by Reconstruction Finance Corporation for the express purpose of enabling plaintiff to purchase the assets of Consolidated National Bank, a National Bank, doing business at Tucson, Pima County, Arizona. That said assets of said Consolidated National Bank were practically all situated in said Pima County, and were purchased by plaintiff in February, 1935. That among said assets were the banking furniture and equipment, and the banking house and office building owned by said Consolidated National Bank in the City of Tucson, which constitute practically all of the tangible real and personal property assessed, in the manner aforesaid as constituting the assessible value of plaintiff's shares of stock in Pima County.

XVI.

That the aforesaid valuation by the County Assessor of Pima county was excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, and the undivided profits of $101,367.14, is $621,367.14, which represents the shares of common capital stock of the plaintiff. Of this amount, 16.88 per cent, or the sum of $104,886.77, is properly apportioned to Pima county, representing that portion of plaintiff's shares of common stock apportioned to Pima County. To make allowance for probable shrinkage in book assets and the normal difference

between the book value of the assets and the actual value of the shares of stock in accordance with the method prescribed by the State Tax Commission as aforesaid, one-fourth thereof, or the sum of $26,-221.69 must be deducted, leaving [93] the amount of $78,665.08, as the actual cash value for the year 1936, of that portion of plaintiff's shares of common stock which is assessable in Pima county. That the excess over said sum of $78,665.08 assessed against the shares of stock of plaintiff by the County Assessor of Pima county, which is the amount of $241,844.92, was assessed on account of values represented by plaintiff's preferred stock, owned and held by the Reconstruction Finance Corporation.

XVII.

That the County Assessor of Graham County valued the shares of stock of the plaintiff in his county in the year 1936 by placing a valuation on the several items of tangible real and personal property owned and held by the plaintiff in said county and totaling said valuation of said items of real and personal property, and taking said total as the actual cash value of that portion of the capital stock of the plaintiff assessable in Graham county. That the valuation so arrived at by said County Assessor of Graham County was and is $22,470.00. That the assessment made by said Assessor does not show whether said valuation was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If said valuation

is construed as imposed upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Graham County of $0.432 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of $15.83 per share. That $840,000.00 worth of the $1,240,000.00 worth par value of plaintiff's preferred stock was purchased from plaintiff by Reconstruction Finance Corporation for the express purpose of enabling plaintiff to pay off a debenture of $840,000.00 owed by The Valley Bank & Trust Company to Reconstruction Finance Corporation. Said The Valley Bank & Trust [94] Company was a state bank, having its principal place of business in Maricopa County, and branches in several other counties, including Graham County. That all of the assets of said bank were purchased by plaintiff in February, 1935, and said debenture of $840,000.00 was paid by plaintiff out of the proceeds of plaintiff's preferred stock sold to Reconstruction Finance Corporation. That the assets of the Graham county branch of said The Valley Bank & Trust Company were 4.427% of the total assets of said The Valley Bank & Trust Company, and the pro rata part of the Graham County branch of said debenture of $840,000.00 was 4.47% of said $840,000.00, or $37,186.80, so that said sum of $37,186.80 of the proceeds plaintiff received from the sale of its preferred stock to Reconstruction Finance Corporation went into said Graham County branch.

That the aforesaid valuation by said County Assessor of Graham county was and is excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, and the undivided profits of $101,367.14, is $621,367.14, which represents the shares of common capital stock of the plaintiff. Of this amount, 2.73 per cent, or the sum of $16,963.32 is properly apportioned to Graham county, representing that portion of plaintiff's shares of common stock apportioned to Graham county.

From said sum must be deducted one-fourth thereof, or the sum of $4,240.83, to make allowance for probable shrinkage in book assets and the normal difference between the book value of the assets and the actual value of the shares of stock in accordance with the method prescribed by the State Tax Commission as aforesaid, leaving the amount of $12,722.49 as the true valuation for tax purposes for the [95] year 1936, of that portion of plaintiff's shares of common stock which is assessable in Graham county. That the valuation arrived at by the County Assessor of Graham county in excess of said sum of $12,722.49, said excess being $9,747.51, was assessed upon values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation."

XVIII.

That the County Assessor of Yavapai County made his valuation of plaintiff's shares of stock for

tax purposes for the year 1936 in the manner following: He added together the amount of the common capital stock, surplus and undivided profits shown by the statements filed with him by plaintiff as aforesaid, the total so arrived at being the sum of $621,367.14, which represents the common capital stock of the plaintiff. Said County Assessor then took 2.92 per cent of said sum, (said 2.92 per cent being the percentage shown by the statement filed with him by the plaintiff as the percentage properly apportioned to Yavapai County), thus arriving at $18,143.92 as the amount apportioned to Yavapai County, and then deducted one-fourth of said amount, leaving the sum of $13,607.94 as the assessable value of that portion of plaintiff's shares of common stock properly apportioned to Yavapai County.

That said valuation so made by the County Assessor of Yavapai County was satisfactory to plaintiff, and plaintiff made no objection thereto, either before the County Board of Equalization, or the State Board of Equalization.

XVIII.

That the County Assessor of Gila County made his valuation of plaintiff's shares of stock for tax purposes for the year 1936 in the manner following: He added together the amount of the common capital stock, surplus and undivided profits [96] shown by the statement filed with him by plaintiff as aforesaid, the amount so arrived at being the sum of

$621,367.14, which represents plaintiff's shares of common capital stock as shown by plaintiff's statement filed with said county assessor. Said county assessor then took approximately 7.26 per cent of said sum, (said 7.26 per cent being the percentage shown by the statement filed with him by the plaintiff as the percentage properly assessable to Gila county), thus arriving at $45,110.00 as the amount apportioned to Gila county, which sum said assessor placed on the tax roll as the assessable value of plaintiff's shares of stock for tax purposes for the year 1936 in said Gila County.

That said valuation so made by the county assessor of Gila county included no values attributable to preferred stock of the plaintiff, and was proper except that there should have been deducted from the sum of $45,110.00, as shown by the statement filed by plaintiff, one-fourth thereof, or the sum of $11,277.81, and leaving the sum of $33,833.44 as the actual cash value for tax purposes for the year 1936, of that portion of plaintiff's shares of common stock which is assessable in Gila county. That said deduction of one-fourth must be made as aforesaid in order to place the valuation of plaintiff's shares of stock on the same basis as the valuation of the shares of stock of other banks in the state of Arizona, which were all valued either by the county assessors or the State Board of Equalization, by the method prescribed by the State Tax Commission hereinabove set forth.

XIX.

That within the time provided by law, plaintiff filed a written protest against the foregoing valuations of its shares of stock herein complained of with the County Board of Equalization in each of the counties of Maricopa, Pima, Graham and [97] Gila, being all of the counties in which the valuations of its shares of stock are complained of herein, except Yavapai county, in which county the valuation made by the county assessor was satisfactory to the plaintiff, but was afterwards attempted to be increased by order of the State Board of Equalization as hereinafter set forth.

Plaintiff further, within the time provided by law, appeared before the County Board of Equalization in each of said counties in which it filed written protests as aforesaid, and urged the correction and reduction of said assessments in all respects herein complained of. That each of said County Boards of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XX.

That none of the aforesaid County Boards of Equalization made any changes in the valuations made as aforesaid by the respective county assessors upon the shares of stock of the plaintiff and that the clerk of each of said boards of supervisors, immediately after the July adjournment of said Boards of Equalization, transmitted to the State Board of Equalization the respective valuations

made as aforesaid by the respective county assessors, which valuations were as follows, to-wit:

Maricopa County	$1,182,712.68
Pima County	318,510.00
Graham County	22,470.00
Yavapai County	19,607.94
Gila County	45,110.00

XXI.

That on or about the 5th day of August, 1936, the plaintiff filed a written protest with the defendants, Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization of the State of Arizona, protesting against the valuations of its shares of stock in Maricopa County, Pima [98] county, Graham county and Gila county, but making no protest whatsoever against the valuation of its shares of stock in Yavapai County; that said protests against the valuations in Maricopa county, Pima county, Graham county and Gila county, set forth all of the objections to said valuations hereinbefore set forth, and on said 5th day of August, 1936, the plaintiff appeared before said Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization, and urged the correction and reduction of said valuations of its shares of stock in Maricopa county, Pima county, Graham county and Gila county, in all respects herein complained of, but plaintiff made no objection, or urged no correction in the assessment of its shares of stock in Yavapai county; that said defendants, sitting as

a Board of Equalization, heard the plaintiff and took plaintiff's protest and objections under consideration, but did not advise plaintiff that they contemplated making any change whatsoever in the valuation placed upon plaintiff's shares of stock in Yavapai county.

XXII.

That thereafter, and within the time provided by law, the said State Board of Equalization, as a result of its consideration of the protest of the plaintiff and of the prptests of other banks situated in Maricopa county, ordered a reduction of 25% from the valuation of plaintiff's shares of stock in Maricopa county; that is to say, it reduced said valuation from $1,182,712.68 to $887,034.51. That the valuations of the shares of stock of all other banks in Maricopa county were reduced a like percentage by said State Board of Equalization.

XXIII.

That plaintiff is informed and believes, and upon such information and belief states, that said reduction of the valuations made by the county assessor of Maricopa county of [99] the shares of bank stock in said county, left no bank in the state of Arizona, except the plaintiff, with an assessment upon its shares of stock in excess of 75% of the capital stock, surplus and undivided profits as shown by the books of said bank. That said State Board of Equalization denied any relief to the plaintiff with reference to the valuations placed upon its preferred stock or values represented by

said preferred stock by the county assessor of Maricopa county, and denied all relief prayed by plaintiff with reference to the valuations placed upon its shares of stock in the counties of Pima, Graham and Gila, and left the valuations as made by the county assessors in said counties stand as hereinbefore set forth. That with respect to Yavapai county, said State Board of Equalization, in violation of Section 3063, Revised Code of 1928, without any notice whatsoever to plaintiff as provided by said Section, attempted to increase the assessed valuation of plaintiff's shares of stock in Yavapai county from the sum of $13,607.94, to the sum of $40,763.84, by attempting to add the sum of $27,155.90, as an assessment upon the preferred stock of the plaintiff held by the Reconstruction Finance Corporation. That said State Board of Equalization arrived at said amount of $27,155.90 by valuing plaintiff's shares of preferred stock at 75% of their par value, or $960,000.00, and apportioning 2.92%, (being the percentage of its assets apportioned to said county by plaintiff in its statement) of said sum to Yavapai County. That after the action of the State Board of Equalization upon the valuations of plaintiff's shares of stock, said valuations were as follows:

Maricopa County,	$887,034.51
Pima county,	318,510.00
Graham county,	22,470.00
Yavapai county,	40,763.84
Gila county,	45,110.00

Plaintiff alleges that the said State Board of Equaliza- [100] tion before fixing the above figures considered the valuation of the shares of capital stock for the year 1936 of substantially all banks in the State of Arizona, and fixed the valuation of the shares of stock of all of said banks except the plaintiff at an amount equal to 75% of their capital stock, surplus and undivided profits; that in the case of the plaintiff it declined to fix the valuation of plaintiff's shares of stock on the same basis for the reason that the plaintiff had issued preferred stock, owned and held by the Reconstruction Finance Corporation, and that said State Board of Equalization fixed, or allowed to stand as they had been fixed by the Tax Assessors, the valuations herein shown in excess of 75% of plaintiff's common capital stock, surplus and undivided profits, solely by reason of the fact that it determined that plaintiff ought not to escape taxation on its shares of preferred stock, and that solely by reason of the existence of such preferred stock said State Board of Equalization added the excess amounts above stated to 75% of the common capital stock, surplus and undivided profits as shown by plaintiff's statement, with the object and purpose of requiring plaintiff to pay a tax upon valuations represented by its preferred stock owned and held by the Reconstruction Finance Corporation.

XXIV.

That within the time provided by law the said State Board of Equalization fixed the rate of taxa-

tion to be levied for state purposes, and transmitted to the Board of Supervisors of each of the respective counties that are parties defendant to this suit a statement of the changes which it had made in the assessment and the rate of tax which was to be levied and collected within said county for state purposes, and each of said Board of Supervisors received said statement and ordered placed on the tax roll the respective valuations made by the [101] respective county assessors as hereinabove alleged as ordered changed by said State Board of Equalization, and that there were thereupon placed upon said tax rolls, and that there now appear on said tax rolls of each of the five counties herein complained of, the following valuations, to-wit:

County.	Valuation on Tax Roll
Maricopa	$887,034.51
Pima	318,510.00
Graham	22,470.00
Yavapai	40,763.84
Gila	45,110.00

The said valuations are excessive, illegal and void to the extent and for the reasons following:

Said valuation in Maricopa county is excessive and illegal in the sum of $590,922.00, by reason of the fact that said sum is the valuation placed by the State Board of Equalization upon that portion of the $1,240,000.00, preferred stock of the plaintiff apportioned to Maricopa county.

Said valuation in Pima county is excessive and

illegal in the sum of $239,844.92, for the reason that said sum, while attributed to values represented by tangible real and personal property in Pima county is in reality the valuation of the portion assessable in Pima county of the $1,240,000.00 par value of preferred stock of the plaintiff, owned and held by the Reconstruction Finance Corporation.

Said valuation in Graham county is excessive and illegal in the sum of $9,447.51, for the reason that said sum, while attributed to values represented by tangible real and personal property in Graham county is in reality the valuation of the portion assessable in Graham county of the $1,240,000.00 par value of preferred stock of the plaintiff, owned and held by the Reconstruction Finance Corporation.

Said valuation in Yavapai county is excessive and illegal in the sum of $27,155.90, for the reason that said sum [102] was directed to be added to the tax roll by the State Board of Equalization as the value of the portion assessable in Yavapai county of the $1,240,000.00 of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

Said valuation in Gila county is excessive and illegal to the extent of $11,276.66, being approximately one-fourth of the amount of the valuation of the common stock of the plaintiff, arrived at by the County Assessor of Gila county for the reason that said County Assessor and the State Board of

Equalization made no reduction from the full book value of the shares of common stock of the plaintiff in Gila county, as they did of the valuation of the shares of stock in counties of the state in which other banks were situated, to equalize the value of plaintiff's shares of stock with valuations placed on the shares of stock of other banks, and other classes of property and moneyed capital in the hands of individual citizens of the state coming into competition with the business of national banks.

XXV.

That after the completion of the valuation of plaintiff's shares of stock, and the placing thereof on the tax rolls as aforesaid in the respective counties, the Board of Supervisors and the governing bodies of the cities and towns of each of said counties, (except the city of Phoenix, Maricopa county), finally determined the estimates provided for by Section 3098, Revised Code of Arizona for 1928, and the School Superintendents in said counties furnished to said Boards of Supervisors the estimates provided for by Section 1090, Revised Code of Arizona, 1928, and said Boards of Supervisors assessed taxes for the several amounts estimated as well as the state taxes, at the rate fixed aforesaid upon the taxable property of the county, computed and carried out the real and personal property [103] tax and total tax of every person on said tax rolls, and computed at the proper tax rates deter-

mined by the Board of Supervisors, and the State Board of Equalization, upon the aforesaid valuations and entered upon the said tax rolls as taxes upon the shares of stock of the shareholders of the plaintiff and as payable by the plaintiff, the following amounts, to-wit:

Maricopa county	$44,911.17
Pima county	20,048.36
Graham county	1,334.22
Yavapai county	2,025.98
Gila county	5,728.90

That upon the completion of the tax rolls for the year 1636, said tax rolls containing thereon the respective items of taxes set forth above, the Chairman of the Board of Supervisors of each of said counties as prescribed by statute, annexed thereto, under his hand, a warrant commanding the county treasurer and ex-officio tax collector to collect from the several persons named in said tax roll, including plaintiff, one-half of the taxes set opposite their respective names, including the illegal and void taxes, taxed, assessed and levied aforesaid, on or before the first Monday in November 1936, and the other one-half of said taxes on or before the first Monday in May, 1937. That said tax rolls, together with said warrants, were delivered to the respective county treasurers of said counties, parties defendant hereto in the manner and within the time provided by law.

XXVI.

That upon receipt of said assessment and tax roll, each of said county treasurers, being parties defendant hereto, gave official notice specifying that one-half of said taxes, including said illegal and void taxes so levied and assessed upon plaintiff's said shares of stock would be due and payable on the first Monday in September, 1936, and would become delinquent on the first Monday in November in 1936, at 5:00 [104] o'clock P. M., and that the remaining one-half of said taxes would be due and payable on the first Monday in March, 1937, and would become delinquent on the first Monday in May, 1937, at 5:00 o'clock P. M., and that unless said taxes were paid prior to becoming delinquent, interest would accrue thereon from the time of such delinquency at the rate of ten per cent per annum until paid, or until said property or such part thereof as was necessary had been sold, and thereafter, interest would accrue thereon at the rate provided in the tax certificates issued covering the sale of said property, but not to exceed fifteen per cent per annum.

XXVII.

That before the first Monday in November, 1936, and before the filing of this Bill of Complaint, and during the regular office hours of the respective county treasurers who are parties defendant hereto, plaintiff tendered and offered to pay to each of said county treasurers the amount of taxes which plaintiff believes to be justly due and owing by

the owners and holders of its shares of common stock to said county treasurers for said county and local taxes for the whole year of 1936. The amounts which the plaintiff so tendered and offered to pay to each of said county treasurers are as follows:

Maricopa County	$14,983.29
Pima County	4,900.84
Graham County	673.71
Yavapai County	677.32
Gila County	4,296.68

That plaintiff determined the amounts so above tendered as the amount justly due and owing to the county treasurers for taxes for the year 1936, by computing the valuations of its common capital stock in the manner in which said county treasurers and State Board of Equalization computed the same, excluding however, from said computation plaintiff's shares of preferred stock owned and held by the Reconstruction Finance [105] Corporation, and the assets represented thereby. That is to say, plaintiff added together its common capital stock of $260,000.00, its surplus of $260,000.00 its undivided profits of $101,367.14, making the sum of $621,367.14, and then took the proper percentage thereof apportioned to each of said counties, to-wit: Maricopa County, 63.54 per cent, Pima county, 16.88 per cent, Graham county, 2.73 per cent, Yavapai county, 2.92 per cent, Gila county, 7.26 per cent, thus

making the actual values of plaintiff's shares of common stock in each of said counties as follows:

Maricopa County	$394,816.68
Pima County	104,886.77
Graham County	16,963.32
Yavapai County	18,143.92
Gila County	45,110.00 (approximatey)

and then took 75% of each of said amounts, thus arriving at a taxable value in each of said counties for plaintiff's shares of common stock as follows:

Maricopa County	$296,112.51
Pima County	78,665.08
Graham County	12,722.49
Yavapai County	13,607.94
Gila County	33,832.50

and computed the tax at the respective rates as fixed in said counties by the proper authorities therein, thus arriving at the tax in each of said counties at the above amounts.

That the amount so tendered by plaintiff is the amount of taxes which would have been assessed against its shares of common capital stock in the several counties that are parties defendant hereto by the action of the assessing officials and State Board of Equalization if said taxing officials and State Board of Equalization had applied the same basis of valuation to plaintiff's shares of common capital stock as they applied to the shares of other

banks, state and national, doing business in the State of Arizona, and is likewise the amount that the taxing officials and the State Board of Equali-
[106] zation would have assessed plaintiff's shares of common capital stock if they had not attempted to impose additional taxes upon plaintiff by reason of the fact that preferred shares of stock of the plaintiff were owned and held by the Reconstruction Finance Corporation.

XXVIII.

That each of the said county treasurers aforesaid refused and continues to refuse to accept payment of the amount tendered upon the ground that said amount tendered was not the full amount of taxes assessed to and payable by plaintiff for the purposes for which it was tendered. That each of said county treasurers, on refusing said tender, declared that it was his duty to collect from plaintiff the amount of taxes assessed against plaintiff's shares of stock that appeared on his books, and that he would proceed to collect the same in accordance with the laws of the state of Arizona.

That plaintiff has been and is willing and able, and has stood ready and will continue to stand ready to pay to each of the above mentioned county treasurers the amounts tendered as aforesaid, and that if this court shall hold that the sums which plaintiff has tendered and offered to pay to the said county treasurers, or any of them, for the purposes for which said tenders were made, are

less than the amounts found justly and equitably due and owing by the plaintiff to the said county treasurers, or any of them, for 1936 taxes, plaintiff stands ready, able and willing to pay, and will pay to the said county treasurers, and each of them, such other and further sum or sums as this court shall find to be just and equitable.

XXIX.

That it was and is provided by Section 3101, Revised Code of Arizona for 1928, as amended by Chapter 106, Session Laws of Arizona for 1931, that all taxes levied upon real or personal [107] property shall be a lien upon the property assessed, which lien shall attach on the first Monday in January in each year and shall not be satisfied or removed until such taxes, penalties, charges and interest are paid or the property is finally vested in a purchaser under a sale for taxes, and that said lien shall be prior and superior to all other liens and encumbrances upon said property, except liens and encumbrances held by the state of Arizona. That it is further provided by said section, amended as aforesaid, that personal property shall be liable for taxes levied on real property and real property shall be liable for taxes levied on personal property, and that a judgment against real property for non-payment of taxes thereon or assessed to the personal property of the same person shall not be prevented by showing that the owner thereof was possessed of personal property out of which the taxes could have been made.

That it was and is provided by Section 3070, Revised Code of Arizona, 1928, that the taxes due upon shares of banking corporations or associations shall be paid by such corporation or association and shall be a lien against and assessed to such shares of stock and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3112 of the Revised Code of Arizona, 1928, that the county treasurer may at any time after receiving the tax roll, collect by distraint and sale, if not otherwise collected, the taxes due on personal property; that the sale must be at public auction after one week's notice of the time and place thereof, and must be of a sufficient amount of the property issued to pay the taxes, fees and costs, and that on payment of the purchase price and [108] the delivery of the property with a bill of sale thereof, title thereto vest in the purchaser.

That it was and is provided by Section 15 of Title 103 of Arizona Session Laws of 1931, that taxes upon real estate if unpaid, shall become delinquent, first half, on the first Monday in November, and second half, on the first Monday in May, of each year, and that it was and is provided by Section 17 of said Chapter 103, that all taxes shall bear interest from the time of delinquency at the

rate of ten per cent per annum until paid, and a fraction of a month shall be counted as a whole month, and that it was and is further provided by Section 18 of said Chapter 103, that all real property upon which the taxes, including personal property taxes secured thereby are unpaid and delinquent, shall be subject to sale as in said chapter provided.

XXX.

That by virtue of the foregoing provisions of the statutes of the state of Arizona, the taxes levied and assessed upon plaintiff's shares of stock for the year 1936 in the manner aforesaid, whether legal or illegal, became payable on or before the second day of November, 1936.

Plaintiff in the year 1936, and at all times since, has owned and held real estate in all of the counties which are parties defendant to this suit, except Yavapai County.

That many of the owners and holders of plaintiff's shares of stock owned and held during the year 1936, and now own and hold real estate in one or more of said counties, and that the aforesaid illegal taxes are an apparent lien or cloud upon the real estate owned by the plaintiff in the respective counties and upon the real estate of the shareholders of the plaintiff in the respective counties as well as upon said shares of stock and that said shares of stock on said 2nd day [109] of November, 1936, became subject to seizure and sale for said taxes in the manner provided by the Statutes of

Arizona above set forth. That by reason of the statutes above mentioned, plaintiff could not with safety to itself permit the transfer of shares of its stock on its books or pay dividends to its share-holders on its shares of stock and if it refused to permit such transfers or refused to pay any such dividends on account of the non-payment of said taxes by said share-holders, it might subject itself to numerous suits brought by its shareholders to compel such transfers or to recover damages for refusing to make such transfers or to pay dividends.

That it was impossible for plaintiff to determine from the assessments made in Pima and Graham counties whether the taxes imposed in said counties were imposed solely on plaintiff's shares of common stock or upon both common and preferred shares and if plaintiff assumed that said taxes were imposed upon both classes of stock, it was impossible to apportion the same between the common and preferred shares. Hence, if plaintiff paid said taxes as demanded by the treasurers of said two counties it would not know to which class of its shareholders to charge said payment, or if it charged the same to both classes, it would not know what amount to charge to each, and if it attempted to secure reimbursement by withholding payment of dividends or refusing transfers of shares, it would subject itself to a separate suit for damages by each of its shareholders.

The plaintiff, finding itself involved in the diffi-

culties above mentioned, filed its original Bill of Complaint in this court before the second day of November, 1936, and prayed for the issuance of a temporary injunction restraining the defendants from proceeding to collect the taxes complained of; that after said complaint was filed, a stipulation was entered [110] into by and between the plaintiff and the several defendants by which it was stipulated and agreed that the several defendant county treasurers would accept the amount of taxes theretofore tendered by the plaintiff to each of them without prejudice to their right to collect the remainder at any future time and that the plaintiff might withdraw its application for temporary injunction and that the said defendants would refrain from proceeding to enforce collection of the taxes alleged by plaintiff to be illegal during the pendency of this suit, but that said defendants or any of them should have the right at any future time to proceed to collect said taxes in the manner they thought proper and that if they did so proceed, or threaten to proceed, plaintiff should have the right to renew its application for temporary injunction. That said stipulation expressly provided that the rights of any party to prosecute or defend this suit should not be prejudiced or affected in any way by said stipulation, or anything done in pursuance thereof except in so far as said stipulation expressly provided therefor. That said stipulation was approved by an Order regularly made and entered by the court.

That notwithstanding the above mentioned stipulation the County Treasurer of Pima County never accepted the amount of taxes provided to be paid to and accepted by him.

That on or about the 10th day of April, 1939, the County Treasurer of Pima County gave notice to the plaintiff that he would proceed to collect all of the taxes assessed in his county against plaintiff's shares of stock for the year 1936, including those alleged to be illegal by the plaintiff, as well as those admitted to be legal.

That plaintiff is informed and believes and upon such information and belief alleges that said County Treasurer will proceed to collect such taxes in the manner provided by law [111] unless restrained by the order of this court, and that by reason of the aforesaid action of the County Treasurer of Pima county, all of the defendants now renew their threat to enforce collection of the taxes hereby sought to be enjoined. That those county officers made parties defendant hereto who have come into office since filing the original Bill of Complaint continue the threat of their predecessors to enforce collection of said taxes, and that by reason of the aforesaid threats, plaintiff now renews its application for temporary injunction.

XXXI.

That it was and is provided by Section 3065, Revised Code of Arizona for 1928, that a taxpayer dissatisfied with the amount of his assessment as

reviewed by the State Board of Equalization, may appeal from said assessment to the Superior Court of the county where the taxes are payable; that the remedy of such appeal was and is not available to the plaintiff to relieve it from the burden of the illegal taxes herein complained of for the following reasons:

1. That said appeal is by said Section 3065 limitem to a determination of the full cash value of the property assessed, and does not give the party appealing the right to question the legality of the tax imposed or any part thereof.

2. That the judgment of the court on such appeal is by said Section 3065, limited to finding the full cash value of the property assessed and said judgment cannot provide for the elimination from the assessment of property illegally or wrongfully assessed.

3. That the valuations made by the county assessors of Pima and Graham counties sought to be reviewed herein by plaintiff, present an issue as to the proper division of the assets of plaintiff between each of said counties and the county of Maricopa, in which the principal office of plaintiff [112] is situated, and that said issue cannot be considered or determined on such appeal.

That such appeal would have to be taken separately from the valuation made by each of the five counties to the Superior Court of that County. The question of apportionment among said five counties would have to be determined separately

in each of said counties without an opportunity for any county, except the one in whose Superior Court the particular suit was pending, to be heard on said question, with the result that there would probably be five different decisions and five different appeals to the Supreme Court, all of which would have to be determined without opportunity for the several counties to directly contest their respective contentions.

4. That no such appeal can be taken unless the appellant first pays to the said county treasurer the amount of taxes levied against his property, and unless so paid the appeal must be dismissed by the court, and there is no provision for the county treasurer withholding the disbursements of the money paid by appellant until the determnation of said appeal and the judgment on the appeal, if in favor of the appellant, can only be a judgment against the county for the amount of the excess taxes paid and such judgment will be of little value to the plaintiff for the reasons hereinafter set forth.

5. That said appeal lies only to the Superior Court of the county in which the tax is assessed and is not available in a Federal Court; that such appeal is a judicial and not an administrative remedy and plaintiff, under the constitution and laws of the United States, is not obliged to resort thereto but may bring its action in a Federal Court of Equity.

XXXII.

That it was and is provided by Section 55 of Chapter 103 of Arizona Session Laws for 1931, that no person upon whom a [113] tax has been imposed under any law relating to taxation shall be permitted to test the validity thereof either as plaintiff or defendant, unless such taxes shall first have been paid to the proper county treasurer together with all penalties thereon and that no injunction shall ever issue in any court or proceeding in any court against the state or against any county, municipality or officer thereof, to prevent or enjoin the collection of any tax levied.

That it was and is provided by the aforesaid Section 53, that after payment of taxes an action may be maintained to recover any tax illegally collected, and if the tax due shall be determined to be less than the amount paid, the excess shall be refunded in the manner "hereinbefore provided", but that said Chapter 103, Arizona Session Laws of 1931, wholly fails to provide in what manner said refund may be made.

That it was and is provided by Section 876 of the Revised Code of Arizona for 1928, that the treasurers of the several counties shall transmit to the state treasurer all money in the county treasury belonging to the state, or collected for it within ten days after receipt of a letter from the state treasurer to that effect.

That it was and is provided by Section 3107, Revised Code of Arizona for 1928, that the county

treasurer shall pay to the treasurer of each city or town in his county, on the first day of each month in each year, all money in his hands collected for the previous month on taxes for said city or town.

That it was and is provided by Section 1029, Revised Code of Arizona for 1928, that the county treasurer shall receive and hold as a special fund all school moneys, and keep a separate account thereof, and when it is apportioned among the school districts, shall keep a separate account for each district, notify the County School Superintendent on the first of [134] each calendar month of the amount of the county school fund and special district funds on hand in the treasury to the credit of such fund, and pay over on the warrants of the county school superintendent duly endorsed by the person entitled to receive the same, any or all such money.

That there is no provision in the laws of the state of Arizona requiring or permitting county treasurers to withhold from apportionment or distribution to the state or city or towns, or school districts, or other legal subdivisions therein, any tax money paid to them under protest or as a condition precedent to the appeal provided by Section 3065, Revised Code of Arizona for 1928, from the valuation fixed by the State Board of Equalization.

XXXIII.

That the Supreme Court of the state of Arizona has construed Section 55, Chapter 103 of the Ses-

sion Laws of Arizona for 1931, so as to give a taxpayer who pays taxes under protest and sues to recover the same an ordinary judgment against the county into whose treasury the money is paid by the taxpayer. That said court has construed said Section 55 as not creating a trust fund of the tax money paid under protest, and as not requiring the county treasurer to withhold distribution of said tax moneys so paid under protest, and as not requiring said county treasurer to refund the particular moneys paid to him, and has further interpreted said Section 55, together with sections construed together therewith as giving to the taxpayer who pays his taxes under protest merely the right to an ordinary judgment against the county on an equality with other general obligations of the county. As thus construed, said Section 55 gives to the taxpayer paying taxes under protest, if the taxes are shown to have been illegal, a judgment against the county which it is the duty of the Board of Supervisors [115] of the county to pay out of funds in the county treasury not otherwise appropriated, or, if there are no such funds, it becomes the duty of the Board of Supervisors to budget the judgment as a county expense and levy a tax to pay it. That the remedy thus given to the taxpayer who pays illegal taxes under protest is wholly inadequate for the reason that if the plaintiff in this suit should pay the illegal taxes herein complained of, under protest, and should sue to recover the same and obtain a judgment against the respective com-

ties, it would be unable to realize on said judgments for the reason that there are no funds in the treasuries of said counties not otherwise appropriated, which can be applied to the payment of said judgments, and that the duty imposed upon the boards of supervisors to include such judgments in the budget can be exercised only at the time provided by law for the making of the budget, to-wit, on or about the first Monday in August of each year. That provision for such budget is made by Sections 3097 and 3098, Revised Code of Arizona, 1928, and by said sections, and by Sections 3093 and 3094, Revised Code of Arizona, 1928, providing for the levy of taxes, no allowance is made for delinquency in collection, so that if the plaintiff should recover judgments for taxes paid under protest against the several counties that are parties defendant to this suit by virtue of the sections of the statutes aforesaid, a levy would be made only for the amount of such judgments and no allowance whatsoever would be made for delinquencies in the collection of taxes. That by reason of the existing financial depression and the difficulty of collecting taxes in all of the counties which are parties defendant to this suit, a large percentage of the taxes levied becomes delinquent, and remains uncollected for a period of years, and a large percentage of the taxes hereafter levied will be- [116] come delinquent and remain uncollected for a period of years. That plaintiff is informed and believes, and upon such information and belief al-

leges that in Maricopa County, and in Gila County, two of the counties which are parties defendant to this suit, the percentage of unpaid taxes amounts to more than twenty-five per cent, and that in all probability such percentage of delinquencies will continue for a number of years to amount to more than twenty-five per cent, and that by the provisions of Section 33, Chapter 103, of the Arizona Session Laws of 1931, the proceeds of such delinquent taxes, when collected, are required to be distributed for the purposes for which they were originally levied, (exclusive of penalties, which go to the general fund of the county) and the statutes of the state of Arizona make no provision for a further levy to cover delinquencies in collection of the original levy, and that at the last four regular sessions of the legislature of the state of Arizona, has passed laws to a large extent remitting penalties on delinquent taxes.

That it is provided by said Chapter 103, Session Laws of Arizona for 1931, that real property subject to the lien for taxes thereon, or for taxes on personal property assessed to the same owner, may be sold, and when so sold, is subject to redemption for a period of three years. That the taxing officials in the several counties who are parties defendant to this suit, owing to the large amount of delinquent taxes therein, permit a period of time, as long as five years, to elapse before making such sales, and in some of the counties in which plaintiff is assessed

for taxes, no sales for taxes have been made for several years, notwithstanding delinquencies in the payment thereof, and that if and when such sales are made there are usually no purchasers for said real estate, and the same is and will continue to be struck off to the [117] state of Arizona, and no money will be collected on account of such sales until the expiration of the period of redemption, which is three years from the date of the sale, and that by reason of said provisions of the statutes of Arizona, and the existing financial depression, if plaintiff should pay the illegal taxes assessed against its shares of stock, and sue to recover the same from the respective counties, it would probably be more than a year from the date plaintiff obtained judgments before it would receive any payment on said judgments, and it would be many years before it would receive payment of more than 75% of said judgments, and in all probability a large percentage of said judgments would never be paid at all, for the reason that the full amount of the levy for said judgments would in all probability never be collected, for by reason of the acts of the legislature heretofore passed, and which will probably be passed hereafter, waiving the collection of penalties on delinquent taxes, there probably never will be sufficient unappropriated money in the treasuries of said counties to pay said judgments in full. That the illegal taxes against which plaintiff seeks relief in this cause are required to be paid to five different

county treasurers and there is no provision under the laws of Arizona by which one action or proceeding may be brought against the five counties, and therefore, plaintiff would in all events be required to bring at least five separate actions to recover illegal taxes paid by it under protest. That the duty enjoined by law upon the board of supervisors to include judgments for illegal taxes paid under protest in the budget and to make a levy for said judgments, if neglected by said boards of supervisors, is enforcible only by mandamus, and if said boards of supervisors in each of said counties should neglect to include the judgments that [118] might be recovered by plaintiff in their budgets, plaintiff would be required to bring five separate actions in mandamus against said boards of supervisors, after having brought five separate actions to recover judgments.

That by reason of the foregoing facts, plaintiff has the right to resort to a federal court of equity to enjoin the collection of said illegal taxes to avoid the necessity of bringing a multiplicity of suits.

XXXIV.

That as appears from the allegations hereinbefore made, the assessments made or attempted to be made on plaintiff's shares of stock in Pima and Graham counties are based upon a valuation of the physical properties owned and held by plaintiff in said counties. That plaintiff is advised and believes, and

upon such information and belief alleges that the taxing officials of said counties take the position and will assert in any proceeding to recover taxes from them, paid by plaintiff under protest, that under the provisions of Section 3071, Revised Code of Arizona for 1928, they have the right to value plaintiff's shares of stock at an amount not less than the actual cash value of the real and personal property of the plaintiff situated in their respective counties, and that said defendants attempt to justify the assessments made by them upon the real and personal property of the plaintiff in said counties of Pima and Graham as being a valuation of the shares of stock of plaintiff in an amount equal to the actual cash value of the real and personal property of the plaintiff situated in said counties, and that said taxing officials will assert in any suit involving the taxes assessed by them upon plaintiff's shares of stock that the valuation of plaintiff's shares of preferred stock must be apportioned to Maricopa county, the county in which plaintiff's principal banking [119] house is situated, and that the taxing officials of Maricopa county will assert in any suit involving the collection of any taxes imposed by them upon the shares of stock of the plaintiff that a proper percentage of plaintiff's shares of preferred stock must be apportioned to the several counties in which the plaintiff has branches, and that if the plaintiff should pay the taxes assessed against it in the several counties involved in this

suit, and should seek to recover that portion of the taxes imposed upon account of its preferred stock by separate suits against each of the several county treasurers of said counties, the defense would be made in each of said counties that there has not been made a proper apportionment between the several counties of the state of the valuation of plaintiff's shares of stock, and that by such defenses an issue will be presented as to such apportionment which can be determined only in a suit in equity to which all of said counties are parties, and that the laws of the state of Arizona do not authorize the joining in one suit for the recovery of taxes paid under protest, said several counties, and that by reason of such defect in the laws of Arizona, the remedy to pay said illegal taxes under protest and sue to recover the same is wholly inadequate.

That subsequent to the filing of the original complaint in this cause, at the time fixed by law for assessing taxes for the year 1937, the taxing officials of the several counties, parties hereto, and of other counties in the State of Arizona in which plaintiff has branches, assessed taxes for the year 1937 upon plaintiff's shares of stock; that all of such assessments were reviewed at the proper time by the State Board of Equalization; that said Board eliminated all values represented by plaintiff's preferred stock from such assessments for said 1937 taxes, except that in the case of Pima County the assess- [120] ment was again made for an amount equal to the full value of the tangible, real and personal prop-

erty owned by the plaintiff and situated in that County, said Pima County thus again assessing values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and said State Board of Equalization thus again declined to eliminate said values from said assessment and said Pima County imposed a tax of approximately $11,400.00 on values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation. Plaintiff did not appeal from the action of said Board of Equalization under Section 3065, Revised Code of Arizona for 1928, but paid the full tax assessed, under protest, and sued to recover said sum of $11,400.00 from Pima County, or, in the alternative, if Pima county's method of assessment should be found correct by the court, to recover said sum pro rata from the other counties to which it was paid.

The trial court held that the plaintiff's exclusive remedy provided by the State Law was by appeal to the Superior Court of the county, under Section 3065, Revised Code of 1928, and that plaintiff had no remedy to pay the tax under protest and recover the same under Section 55, Chapter 103, Session Laws of 1931; that there is no decision by the Supreme Court of Arizona authoritatively passing upon the question. Said Supreme Court has once said by way of dictum that the remedy provided by Section 55, Chapter 103, Session Laws of 1931, is available only when the tax is assessed under an unconstitutional law, and again it has said by way of

dictum that the remedy provided by Section 55, Chapter 103 Session Laws of 1931, is available whenever no other remedy is provided by law. There being conflicting declarations by it, said Supreme Court does not consider itself bound by either express- [121] ion and deems the question wholly open for future decision.

XXXV.

That by reason of the foregoing facts, plaintiff has no adequate remedy by payment of illegal taxes, and suing to recover the same, and is entitled to maintain this suit in equity for the purpose of preventing a multiplicity of suits, and to obtain an adjudication of the proper apportionment of taxes between the several counties parties hereto.

XXXVI.

That by reason of the provisions in the statute of the state of Arizona hereinbefore alleged, prohibiting the issuance of an injunction to prevent the collection of illegal taxes, plaintiff is without remedy in the courts of the state of Arizona, and has no remedy except in the United States District Court, for the District of Arizona.

XXXVII.

That the plaintiff has exhausted all administrative remedies available to it under the statutes and laws of the state of Arizona.

XXXVIII.

That by reason of all the matters and things hereinbefore alleged, plaintiff, unless granted the relief herein prayed for, will suffer great and irreparable damage and injury, and will be subjected to a multiplicity of suits, and has no plain or adequate remedy at law.

XXXIX.

That a large part of the taxes, the collection of which is herein sought to be enjoined is attempted to be levied and imposed upon the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation of the United States of America. That such levy and collection of taxes by the state or any subdivision or municipality [122] thereof is expressly prohibited by the Act of Congress approved March 20, 1936, which act expressly provides that such shares of preferred stock of national banks shall not be subject to taxation so long as they are owned and held by the Reconstruction Finance Corporation. That under the provisions of Sections 3069 and 3070, of the Revised Code of Arizona, 1928, no taxes are imposed upon national banking associations, but taxes are imposed upon the shareholders of such associations, and such associations are required to pay the taxes imposed on the shares of stock held by such shareholders as the agents of such shareholders. That under the provisions of said sections, it is the duty of plaintiff to pay any taxes legally levied upon its shares of stock, both common and preferred, and the penalties imposed by the statutes of Arizona will be im-

posed upon the plaintiff if it fails to pay any such taxes so legally levied and imposed.

That under the provisions of said Sections 3069 and 3070, of the Revised Code of 1928, plaintiff is required to deduct any taxes paid by it as the agent of its shareholders from dividends becoming payable to its shareholders. That by the provisions of the Act of Congress, approved March 20, 1936, the Reconstruction Finance Corporation is precluded from permitting the plaintiff to deduct any taxes levied upon the shares of preferred stock owned and held by it, so that if plaintiff is compelled to pay the taxes imposed upon its shares of preferred stock as hereinbefore set forth, it will be compelled to pay taxes levied upon the property of another, which it will have no means of recovering from the owner of said property, that is, the Reconstruction Finance Corporation, and that by being compelled to pay such taxes, plaintiff will be deprived of its property without due process of law.

That if it be held that any of the taxes sought to be [123] enjoined herein are not levied or imposed upon plaintiff's shares of preferred stock plaintiff alleges that the taxing officials and State Board of Equalization of the state of Arizona have intentionally imposed taxes upon its shares of common stock at a greater rate than they have imposed taxes upon the shares of stock of all other banks, state and national, in the state of Arizona, in violation of Section 1 of Article IX of the Constitution of Arizona prohibiting discrimination in assessment of taxes upon the same class of property and also

in violation of Section 548, Title 12, United States Code Annotated, providing that shares of stock in national banks shall not be taxed at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the state coming into competition with the business of national banks.

XL.

That plaintiff herein and hereby expressly claims the right, privilege and immunity under the constitution and laws of the United States, of not being subjected to the payment of taxes imposed upon its shares of preferred stock owned and held by the Reconstruction Finance Corporation, and also the right, privilege and immunity of not being assessed for taxes on its shares of stock in violation of Section 548, Title 12, United States Code Annotated, and of not being deprived of its property without due process of law by an illegal and discriminatory assessment of taxes.

Wherefore, Plaintiff Prays:

1. That the assessment of plaintiff's said shares of stock, and the assessment of property owned and held by the plaintiff, made by the county assessors of the several counties parties hereto, for the purpose of state, county, school district and other local taxation, (except City of Phoenix [124] taxes) for the year 1936, as aforesaid, be decreed to be illegal and void and without any force or effect whatsoever, and to be in violation and contravention of the constitution and laws of the United States and the constitution and laws of the State of Arizona.

2. That the said taxes so levied and assessed upon plaintiff's said shares of stock, or upon property owned and held by the plaintiff for the year 1936, for state, county, school district and other local taxation, (except city of Phoenix taxes) set forth, be decreed to be wholly illegal and void. That any taxes which may hereafter be levied or assessed upon plaintiff's shares for said purposes for the year 1936, and based and computed upon said illegal and void assessment, likewise be decreed to be wholly illegal and void.

3. That the apparent lien resulting, and any apparent lien which may hereafter result from the levy and assessment of said taxes on plaintiff's said shares of stock, or on property owned and held by the plaintiff as aforesaid, be decreed to be wholly illegal and void, and without any force or effect whatsoever.

4. That the respective county treasurers, defendants herein, be directed to receive and accept from the plaintiff the respective sums of money heretofore offered and tendered to them, or such other sums as the court may find to be justly due and owing from the plaintiff and its shareholders to said county treasurers for taxes for the year 1938, levied or assessed against plaintiff's said shares of stock, or property owned and held by the plaintiff for state, county, school district and local taxes, for the year 1936, in full satisfaction as and for taxes levied and assessed for said purposes against plaintiff's said shares of stock for the year 1936.

5. That it be adjudged and decreed that plaintiff's [125] shares of preferred stock, and property of the plaintiff represented thereby, is wholly immune and exempt from taxation by or under the authority of the state of Arizona, so long as said shares of preferred stock are owned and held by the Reconstruction Finance Corporation of the United States of America.

6. That a temporary and interlocutory injunction issue out of and under the seal of this court, directed to the defendants, and each of them, commanding them and each of them, and each of their deputies, assistants, agents, servants, employees, attorneys, and successors in office, to desist from collecting or attempting to collect the whole or any part of said illegal and void taxes so levied or assessed, or which hereafter may be levied or assessed upon plaintiff's shares of stock, or upon property owned and held by the plaintiff for the year 1936, as aforesaid, or any penalty or interest thereon, either by distraint or sale, or by suit or sale, or issuance of delinquent tax certificates or otherwise, and to desist from instituting, conducting or causing to be instituted or conducted, any proceedings to enforce the payment of the whole or any part of said illegal or void taxes, or of said penalties, charges or interest, or to enforce or foreclose any apparent lien resulting from the levy and assessment of said taxes as aforesaid, or from advertising or offering plaintiff's said shares, or any part thereof, for sale for the purpose of collecting or

attempting to collect said taxes, penalties, charges or interest, or from issuing or delivering any tax certificate or certificates to any pretended purchaser or purchasers of said property, or any part thereof, or otherwise, by reason of or resulting from said illegal or void taxes so levied or to be levied as aforesaid, and from assessing or pretending to assess or to approve the assessment of [126] plaintiff's said shares for the purpose of state, county, school district and other local taxation in the year 1936, or in any similar manner, or any similar method, and from levying or assessing upon or against plaintiff's said shares in the year 1936, or in any succeeding year, any tax or taxes based or computed upon any such pretended assessment, and from collecting or attempting to collect any such taxes, said temporary or interlocutory injunction to remain in full force and effect until the final hearing of this cause; that upon said hearing, said injunction be made permanent.

7. That plaintiff have such other and further relief as the nature of the case may require, and as to the court may seem meet and equitable, and also a decree for its costs herein.

J. L. GUST,
C. W. RAWLINS,
GUST, ROSENFELD, DIVELBESS, ROBINETTE & COOLIDGE,
RAWLINS & RAWLINS,
Solicitors for Plaintiff.

State of Arizona,
County of Maricopa—ss.

J. L. Gust, being first duly sworn on oath deposes and says:

That he is one of the attorneys for The Valley National Bank, of Phoenix, a corporation, the plaintiff named in the above and foregoing Amended and Supplemental Bill of Complaint, and is duly authorized to make this verification on behalf of said plaintiff;

That he has read said complaint, and that the allegations therein contained are true of his own knowledge, except such allegations as are made upon information and belief, and those allegations he believes to be true.

J. L. GUST.

Subscribed and sworn to before me this 24th day of April, 1939.

ETHOL FROST,
Notary Public.

My commission expires: Feb. 27, 1940. [127]

[Endorsed]: Received copy of within this 24 day of April, 1939. Leslie C. Hardy, Attorneys for Deft. Maricopa County etc. Allan K. Perry for deft. Tax Commission.

[Endorsed]: Filed Apr. 24, 1939. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Helen Stroup, Deputy Clerk. [128]

[Title of District Court and Cause—E-333, E-350.]

MINUTE ENTRY OF THURSDAY, DECEMBER 28, 1939.

Defendants' Motions to Dismiss having been submitted and by the Court taken under advisement.

It Is Ordered that said Motions to Dismiss be and they are denied. [129]

[Title of District Court and Cause—E-333.]

JOINT AND SEVERAL ANSWERS OF DEFENDANTS TO SECOND AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT.

Come now the defendants and, without waiving their respective motions to dismiss heretofore filed herein, or any of them, and still insisting thereon, for their joint and several answers, combined in this single pleading for brevity, to the second amended and supplemental bill of complaint herein, say:

I.

Admit the allegations of paragraph I.

II.

Answering paragraph II, defendants deny that this suit arises under the constitution or laws of the United States; allege that there is a misjoiner of pretended causes of action against the defendants in that the grounds of complaint against the several defendants differ and are distinct and independent of each other.

III.

Admit the allegations of paragraph III. [130]

IV.

Answering paragraph IV, defendants represent to the Court that the allegations of this paragraph are of sections of the Arizona Constitution and statutes of which this Court takes judicial notice.

V.

Answering paragraph V, defendants represent to the Court that the allegations of this paragraph are of sections of the Arizona Constitution and statutes of which this Court takes judicial notice.

VI.

Answering paragraph VI, defendants admit that at the times mentioned therein plaintiff's common capital stock consisted of 52,000 shares at a par value of $5.00 each and that it issued on or about February 11, 1935, to the Reconstruction Finance Corporation 198,400 shares of preferred stock of the par value of $6.25 each and that the Reconstruction Finance Corporation has continued to hold said preferred stock, but deny that the total as a basis of the valuation of the plaintiff's common capital stock was the sum of $699,026.52 as alleged.

VII.

Answering paragraph VII, defendants admit the allegations thereof except as follows: deny that the statements delivered to the county assessors showed

the ownership or number of shares of preferred stock; deny that the total valuation of the common capital stock for taxation among the several counties is the sum alleged in said paragraph; deny that the statement showed proper apportionment [131] of the taxable value of said stock among the several counties.

VIII.

Answering paragraph VIII, defendants represent to the Court that the allegations thereof are wholly immaterial.

Deny the allegations thereof except that defendants admit that during the year 1934 the State Board of Equalization reduced the valuation of the capital stock of the banks of Arizona, including the plaintiff, for the purpose of taxation, 25%; deny that said banks were entitled to such reduction.

Admit that the State Tax Commission did not determine the taxability of preferred stock of banks held by the Reconstruction Finance Corporation.

IX.

Deny the allegations of paragraph IX.

X.

Deny the allegations of paragraph X.

XI.

Have no knowledge with respect to the allegations of paragraph XI and therefore deny the same.

XII.

Answering paragraph XII, defendants admit that the County Assessor of Maricopa County placed a valuation on the common capital stock of the plaintiff in the sum of $793,595.08, but deny that any part thereof represents the value of plaintiff's preferred stock in the hands of the Reconstruction Finance Corporation.

XIII.

Answering paragraph XIII, defendants admit that [132] the County Assessor of Pima County assessed the shares of stock of the plaintiff in said county by placing a valuation thereon in the sum of $327,590.00, and that said amount was equal to the valuation of the tangible real and personal property of the said bank in said county as shown in paragraph XIII.

XIV.

Answering paragraph XIV, defendants deny that there is any ambiguity about the assessment of the Pima County Assessor, and in that behalf allege that the said assessment was on the plaintiff's common capital stock and was not upon the tangible real or personal property of the plaintiff and was not upon the plaintiff's preferred stock and was in accordance with the last sentence of Section 3071 of the Revised Code of Arizona, 1928.

Defendants represent that the allegations with respect to the purchase of $400,000.00 worth of the plaintiff's preferred stock by the Reconstruction Finance Corporation and the purpose of such pur-

chase are of no materiality in this suit; and, not being informed with respect to the truth or falsity of such allegations, do deny the same.

XV.

Answering paragraph XV, defendants deny that the valuation of the Pima County Assessor was excessive or illegal as alleged in said paragraph or at all.

XVI.

Answering paragraph XVI, defendants admit that the County Assessor of Graham County assessed the shares of [133] stock of the plaintiff in said county by placing a valuation thereon in the sums of $22,590.00 and $6,795.00, and that said amounts in the aggregate were equal to the valuation of the tangible real and personal property of the said bank in said county.

XVII.

Answering paragraph XVII defendants deny that there is any ambiguity about the assessment of the Graham County Assessor, and in that behalf allege that the said assessment was on the palintiff's common capital stock and was not upon the tangible real and personal property of the plaintiff and was not upon the plaintiff's preferred stock and was in accordance with the last sentence of Section 3071 of the Revised Code of Arizona, 1928.

Defendants represent that the allegations with respect to the purchase of $840,000.00 worth of the plaintiff's preferred stock by the Reconstruction Finance Corporation and the purposes of such pur-

chase are of no materiality in this suit, and, not being informed with respect to the truth or falsity of such allegations, deny the same.

And defendants deny that the valuation of the said Graham County Assessor was or is excessive or illegal in the manner set forth in said paragraph or at all.

XVIII.

Answering paragraph XVIII, defendants allege that the assessments in Pima and Graham Counties are assessments and valuations of the plaintiff's shares of common capital stock and the taxes computed thereon are payable wholly by the owners of said shares of common stock, and [134] defendants deny that such assessments and valuations are, or that any of them is, wholly void or void at all, or that they are or any of them is excessive, confiscatory or discriminatory, or greatly in excess of the actual value of said common shares, or discriminatory between the holders of common shares in said bank and the holders of common shares in other banks, or between the holders of common shares of stock in the plaintiff and other classes of property in said counties; and deny that the assessments in said two counties or either of them amounts to a taxation of the preferred stock of the plaintiff in the hands of the Reconstruction Finance Corporation and deny that said assessments and valuations or either of them are in violation in any way at all of the provisions of Section 548 of Title 12 of the United States Code Annotated.

XIX.

Answering paragraph XIX, defendants deny that there showuld be deducted from the valuation placed by the Mohave County Assessor on plaintiff's common stock one-fourth thereof or that the said valuation should be reduced in any sum whatever.

XX.

Defendants admit the allegations of paragraph XX, with the exception of Mohave County; defendants deny the allegations with respect to the County of Mohave and its Board of Equalization.

XXI.

Defendants admit the allegations of paragraph XXI.

XXII.

Answering paragraph XXII, defendants admit that the plaintiff filed a protest with respect to the valuations therein mentioned and appeared before the State Board of [135] Equalization and urged correction and reduction of said valuations, but deny that the protest covered all the complaints against said valuations found in the plaintiff's bill; admit that the said Board of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XXIII.

These defendants admit the allegations of paragraph XXIII.

XXIV.

Answering paragraph XXIV, defendants admit the allegations of paragraph XXIV, and in that behalf allege that the taxes therein mentioned were levied by the respective counties upon the plaintiff's common capital stock and were not levied upon plaintiff's preferred stock, and that they were and are legal and valid.

XXV.

These defendants admit the allegations of paragraph XXV except that any part of the taxes was illegal or void and this the defendants deny.

XXVI.

These defendants admit the allegations of paragraph XXVI except that any part of the taxes was illegal or void and this the defendants deny.

XXVII.

Answering paragraph XXVII, defendants admit the tenders therein alleged; represent that the allegations of the method employed by the plaintiff in arriving at what it deemed to be the correct valuations of the taxes are immaterial; have no knowledge with respect thereto and therefore [136] deny the same; deny that the capital stock of the plaintiff was taxed differently from the capital stock of other banks in Arizona and deny that any part of the taxes levied upon plaintiff's common capital stock was based on the plaintiff's preferred stock, and deny that the percentages assigned to the several counties as alleged in said paragraph were correct.

XXVIII.

Defendants admit the allegations of paragraph XXVIII.

XXIX.

Answering paragraph XXIX these defendants represent to the Court that the allegations of this paragraph are of sections of the Arizona statutes of which this Court takes judicial notice.

XXX.

Answering paragraph XXX these defendants admit that the 1935 taxes became payable November 4, 1935, that the plaintiff in that year and since then has owned real estate in all the counties which are defendants to this suit except Yavapai, that many of the owners of plaintiff's shares of stock owned in 1935 and continue to own real estate in one or more of said counties and that the taxes against said shareholders are liens on their real estate, and admit that the shares of stock in plaintiff became subject to seizure and sale for said taxes as provided by the laws of Arizona; that these defendants are not and have not been advised of what the plaintiff can safely do with respect to transferring shares of its stock or paying dividends thereon or what the plaintiff has actually done since this [137] suit was instituted and therefore deny the allegations that the plaintiff cannot so proceed with safety.

Deny that there was any ambiguity in the assessments made in Pima and Graham Counties and re-

peat the allegations that said assessments were against the plaintiff's shares of common capital stock.

Admit the stipulation alleged in said paragraph and that the County Treasurer of Pima County did on or about April 10, 1939 give notice that he would proceed to collect taxes assessed in his county against plaintiff's shares of common capital stock.

XXXI.

Answering paragraph XXXI defendants request the Court to take judicial knowledge of Section 3065 of the Revised Code of Arizona, 1928, and all other constitutional and statutory provisions of that State.

Defendants deny that the remedy provided by said Section 3065 was not available to the plaintiff for the reasons set forth in said paragraph XXXI or for any other reasons;

And in that behalf defendants represent to this Court that the procedure prescribed by said Section 3065 was open and available to the plaintiff and that this Court of equity should not entertain a petition to enjoin the collection of taxes due to the State of Arizona and the counties defendant hereto for the year 1935.

And defendants represent unto this Court that the plaintiff was bound to employ the method set forth in said Section 3065 and that if so it be that said method is judicial [138] in character, the same was available to the plaintiff not only in the Su-

perior Courts of the State of Arizona but also, by appropriate removal proceeding, in the United States District Court for the District of Arizona, where all of said proceedings could and would have been consolidated or considered and heard together.

XXXII.

Answering paragraph XXXII defendants represent unto the Court that the allegations thereof, with the exception of the last paragraph, are of sections of the Arizona statutes of which this Court takes judicial notice; that the said allegations are purely argumentative and immaterial for the reason that, as set forth in paragraph XXXIII of plaintiff's bill, the Supreme Court of the State of Arizona has held in the case of Maricopa County v. Hodgin, 46 Ariz. 247, that the taxpayer may bring an action against the county to recover taxes illegally paid, and secure judgment against and payment from said county, notwithstanding the fact that the county authorities had distributed the taxes as collected to the State and municipal authorities.

XXXIII.

Answering paragraph XXXIII defendants represent to the Court that the reference to the decision of the Supreme Court of Arizona in said paragraph is to said case of Maricopa County v. Hodgin, of which this Court takes judicial notice; that the judgment allowable in an action by a taxpayer against a county is on the same basis as any other

judgment against said county and of equal validity.

[139]

These defendants deny that the remedies given by the laws of the State of Arizona and particularly Section 3065 and Section 55, Chapter 103 of the Session Laws of 1931, are inadequate.

These defendants represent to the Court that the argument of the plaintiff with respect to the operation of the budget law upon the collection of taxes is immaterial; that if it were accepted no judgment against the county would ever be paid in full; that in truth and in fact under the laws of the State of Arizona all judgments against the defendant counties have been and are promptly paid in full.

And these defendants deny that if the plaintiff had paid its taxes as levied and assessed against its common capital stock in the several counties defendant to this suit, and had secured judgments either under Section 3065 of the 1928 Code or Section 55, Chapter 103 of the Session Laws of 1931, they would not have been promptly paid in full.

Defendants represent that the allegations with respect to the operation of the budget laws of Arizona and the right to proceed against the counties for taxes allegedly illegally collected and the necessity for maintaining more than one suit are of sections of the Arizona statutes of which the Court takes judicial notice; defendants deny that the relief afforded by the provisions of the Arizona law would require a multiplicity of suits by plaintiff or any more suits than would be required of any taxpayer

owning property in more than one county and deny that more than one action by plaintiff under Section 55, Chapter 103, Session Laws of 1931 would be necessary. [140]

XXXIV.

Answering paragraph XXXIV, defendants admit that the taxing officials of Pima and Graham Counties take the position that they have the right to value plaintiff's shares of taxable stock in each of such counties at an amount not less than the actual cash value of the real and tangible personal property of the plaintiff situated in their respective counties; deny that said officials of said counties will or do assert that the valuation of plaintiff's preferred stock must be apportioned to Maricopa County; and in that behalf defendants allege that the taxing authorities of said two counties take the position that whenever the valuation of the taxable shares of a bank having branches in several counties as apportioned on the basis of assets is less than the value of the real and tangible personal property of the bank situated in such county, the value of the taxable stock in such county is increased to the extent of the difference.

Defendants represent that the allegations with respect to an action brought by plaintiff against the several counties defendant hereto as well as other counties for taxes collected from the plaintiff for the year 1937, which was a single action against all of said counties under Section 55, Chapter 103, Ses-

sion Laws of 1931, and the opinion of the trial court in said action and the attitude of the Supreme Court of Arizona on the availability of certain sections of the Arizona statutes for the recovery of illegally collected taxes are immaterial; and in that behalf defendants represent to the Court that the plaintiff takes the position in said action that Section 3065 is not exclusive under [141] the circumstances of said action and that the remedy by Section 55, Chapter 103, Arizona Session Laws of 1931, is available.

XXXV.

Defendants deny the allegations of paragraph XXXV.

XXXVI.

Defendants deny the allegations of paragraph XXXVI.

XXXVII.

Defendants deny the allegations of paragraph XXXVII.

XXXVIII.

Defendants deny the allegations of paragraph XXXVIII.

XXXIX.

Answering paragraph XXXIX defendants have no knowledge relative to the advice given to the plaintiff concerning the taxability of its preferred stock prior to March 20, 1936, and therefore deny the allegations in that regard; defendants represent to the Court that plaintiff's original bill of complaint was founded upon the contention that the

defendants had taxed its preferred stock which it alleged to be exempt from taxation; and that it otherwise presented no federal question; defendants represent that this Court takes judicial notice of the Act of Congress passed March 20, 1936.

XL.

And for separate defense, defendants allege that [142] the plaintiff in this action had available to it by the laws of the State of Arizona an administrative remedy, to-wit, that provided by Sections 3056-3062 inclusive, Arizona Revised Code of 1928, wherein the State Tax Commission of Arizona had full authority to determine the proper valuation to be fixed upon the plaintiff's taxable shares of stock in the several counties in which it was operating in the year 1935 and to settle and determine any and all questions of apportionment of the valuation of plaintiff's taxable stock among such counties; that the plaintiff did not avail itself of such remedy prior to the institution of this suit, or at all.

XLI.

And for separate defense, defendants allege that action taken by the plaintiff before the State Board of Equalization constituted a proceeding under Section 3063, Arizona Revised Code of 1928 and plaintiff, if dissatisfied with the amount of its assessment as fixed by the said Board, had the remedy of appeal therefrom pursuant to the provisions of Section 3065 of the Arizona Revised Code of 1928;

that the plaintiff did not avail itself of the remedy therein provided prior to the institution of this suit, or at all.

XLII.

And for separate defense, defendants allege that if said Section 3065, mentioned in the preceding paragraph of this answer, be held to be judicial in character, as alleged by the plaintiff, it did afford to the plaintiff a full, complete and adequate remedy available not only in the Courts of the State of Arizona but of the United States District Court for the District of Arizona by removal to the law side [143] thereof.

XLIII.

And for separate defense, defendants allege that Section 55, Chapter 103, Arizona Session Laws of 1931, did afford to the plaintiff herein a plain, adequate and speedy remedy at law both in the Courts of the State of Arizona and in the United States District Court for the District of Arizona on the law side thereof.

XLIV.

And for separate defense, defendants allege that at the time this bill was brought it presented no federal question to this Court for the reason that said bill was founded on the allegations and contention, insofar as any federal question was presented, that the taxes complained of were in part upon the preferred stock of the plaintiff and that such preferred stock was exempt from taxation:

that at said time and until and including March 20, 1936 the preferred stock of the plaintiff was taxable by and under the authority of the State of Arizona.

XLV.

And for separate defense, defendants allege that under and pursuant to the laws of the State of Arizona in effect in 1935 and at the present time all taxes become a lien against the taxed property as of January 1 of the taxable year; that long prior to the passage of the Act of Congress of March 20, 1936 mentioned in paragraph XXXIX of plaintiff's bill the taxes of which the plaintiff complains had become a lien on the taxable shares of plaintiff's stock and had become payable; that if in truth and in fact [144] any part of the taxes were levied against the plaintiff's preferred stock, which these defendants deny, the said Act of Congress was unconstitutional and void in that it deprives the State of Arizona and the counties thereof of their property without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

XLVI.

And for separate defense, defendants allege that said Act of Congress, insofar as it purports to operate retroactively upon the rights of the State of Arizona and the defendant counties to collect taxes for the year 1935 already levied and payable, is the attempted exercise of a power not delegated to the United States by the Constitution of the

United States and not prohibited to the State of Arizona and it violates the Tenth Amendment to said Constitution.

XLVII.

For separate defense, defendants allege that said Act of Congress of March 20, 1936 is unconstitutional and void in that the Congress of the United States was without power or authority to annul and destroy property rights lawfully and validly accrued to the State of Arizona in the exercise of its power of taxation to raise revenues for state and county purposes and the attempt so to do by said Act of Congress constitutes an invasion of the sovereign rights of the State of Arizona.

Wherefore, these defendants pray that the plaintiff take nothing by its suit and that they have their costs and [145] such other relief as may be meet and just.

JOE CONWAY,
Attorney General, State of Arizona,
W. E. POLLEY,
Assistant Attorney General,
RICHARD F. HARLESS,
County Attorney, Maricopa County,
LESLIE C. HARDY,
Deputy County Attorney, Maricopa County,

CHAS. ROGERS,
County Attorney, Graham County,
E. ELMO BOLLINGER,
County Attorney, Mohave County,
J. MERCER JOHNSON,
County Attorney, Pima County,
CONNER & JONES,
By GERALD JONES,
Special Attorneys for Pima County, Arizona.
303-6 Valley National Building, Tucson, Arizona.

[Endorsed]: Filed Sep. 24, 1940. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [146]

[Title of District Court and Cause—E-350.]

JOINT AND SEVERAL ANSWERS OF DEFENDANTS TO AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT.

Come now the defendants and, without waiving their respective motions to dismiss heretofore filed herein or any of them, and still insisting thereon, for their joint and several answers, combined in this single pleading for brevity, to the amended and supplemental bill of complaint herein, say:

I.

Admit the allegations of paragraph I.

II.

Answering paragraph II, defendants deny that this suit arises under the constitution or laws of the United States; allege that there is a misjoinder of pretended causes of action against the defendants in that the grounds of complaint against the several defendants differ and are distinct and independent of each other.

III.

Admit the allegations of paragraph III. [147]

IV.

Answering paragraph IV, defendants represent to the Court that the allegations of this paragraph are of sections of the Arizona Constitution and statutes of which this Court takes judicial notice.

V.

Answering paragraph V, defendants represent to the Court that the allegations of this paragraph are of sections of the Arizona Constitution and statutes of which this Court takes judicial notice.

VI.

Answering paragraph VI, defendants admit that at the times mentioned therein plaintiff's common capital stock consisted of 52,000 shares at a par value of $5.00 each and that it issued on or about

February 11, 1935, to the Reconstruction Finance Corporation 198,400 shares of preferred stock of the par value of $6.25 each and that the Reconstruction Finance Corporation has continued to hold said preferred stock, but deny that the total as a basis of the valuation of the plaintiff's common capital stock was the sum of $610,026.52 as alleged.

VII.

Answering paragraph VII, defendants admit that the amount of capital stock, surplus and undivided profits and shares of capital stock were on January 1, 1936 as alleged therein but deny that a total as a basis for the valuation of its common stock for the year 1936 was $621,367.14.

VIII.

Answering paragraph VIII, defendants admit the [148] allegations thereof except as follows: deny that the statements delivered to the county assessors showed the ownership or number of shares of preferred stock; deny that the total valuation of the common capital stock for taxation among the several counties is the sum alleged in said paragraph; deny that the statement showed proper apportionment of the taxable value of said stock among the several counties.

IX.

Answering paragraph IX, defendants represent to the Court that the allegations thereof are wholly immaterial.

Deny the allegations thereof except that defendants admit that during the year 1934 the State Board of Equalization reduced the valuation of the capital stock of the banks of Arizona, including the plaintiff, for the purpose of taxation, 25%; deny that said banks were entitled to such reduction.

Admit that the State Tax Commission did not determine the taxability of preferred stock of banks held by the Reconstruction Finance Corporation.

X.

Deny the allegations of paragraph X.

XI.

Deny the allegations of paragraph XI.

XII.

Deny the allegations of paragraph XII.

XIII.

Answering paragraph XIII, defendants represent to the Court that the allegations thereof are immaterial; [149] that they have no knowledge concerning the truth or falsity thereof.

XIV.

Answering paragraph XIV, defendants admit that the County Assessor of Maricopa County placed a valuation on the common capital stock of the plaintiff in the sum of $787,896.00, but deny that any part thereof represents the value of plaintiff's preferred stock in the hands of the Reconstruction Finance Corporation.

XV.

Answering paragraph XV, defendants admit that the County Assessor of Pima County assessed the shares of stock of the plaintiff in said county by placing a valuation thereon in the sum of $318,510.00, and that said amount was equal to the valuation of the tangible real and personal property of the said bank in said county as shown in paragraph XV; deny that there is any ambiguity about the assessment of the Pima County Assessor and in that behalf allege that the said assessment was on the plaintiff's common capital stock and not upon the plaintiff's preferred stock and was in accordance with the last sentence of Section 3071 of the Revised Code of Arizona, 1928.

Defendants represent that the allegations with respect to the purchase of $400,000.00 worth of the plaintiff's preferred stock by the Reconstruction Finance Corporation and the purpose of such purchase are of no materiality in this suit; and, not being informed with respect to the truth or falsity of such allegations, do deny the same. [150]

XVI.

Answering paragraph XVI, defendants deny that the valuation of the Pima County Assessor was excessive or illegal as alleged in said paragraph or at all.

XVII.

Answering paragraph XVII, defendants admit that the County Assessor of Graham County as-

sessed the shares of stock of the plaintiff in said county by placing a valuation thereon in the sum of $22,470.00 and that said amount was equal to the valuation of the tangible real and personal property of the said bank in said county; deny that there is any ambiguity about the assessment of the Graham County Assessor, and in that behalf allege that the said assessment was on the plaintiff's common capital stock and not upon plaintiff's preferred stock and was in accordance with the last sentence of Section 3071 of the Revised Code of Arizona, 1928.

Defendants represent that the allegations with respect to the purchase of $840,000.00 worth of the plaintiff's preferred stock by the Reconstruction Finance Corporation and the purposes of such purchase are of no materiality in this suit, and not being informed with respect to the truth or falsity of such allegations, deny the same.

And defendants deny that the valuation of the said Graham County Assessor was or is excessive or illegal in the manner set forth in said paragraph or at all.

XVIII.

Admit the allegations of paragraph XVIII. [151]

XVIII.

Answering paragraph XVIII, defendants deny that there should be deducted from the valuation placed by the Gila County Assessor on plaintiff's

common stock one-fourth thereof or that the said valuation should be reduced in any sum whatever.

XIX.

Defendants admit the allegations of paragraph XIX.

XX.

Defendants admit the allegations of paragraph XX.

XXI.

Answering paragraph XXI, defendants admit that the plaintiff filed a protest with respect to the valuations therein mentioned and appeared before the State Board of Equalization and urged correction and reduction of said valuations, but deny that the protest covered all the complaints against said valuations found in the plaintiff's bill; admit that the said Board of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XXII.

Answering paragraph XXII, defendants admit that the State Board of Equalization ordered a reduction of 25% of the valuation of the plaintiff's shares in Maricopa County.

XXIII.

Answering paragraph XXIII, defendants admit that the valuations as determined by the State Board of Equalization are correctly set up in said paragraph but deny that the plaintiff bank was discriminated against in any way by the said State

Board of Equalization; deny that said Board was without authority to increase the valuation of the plaintiff's shares of stock in Yavapai County; deny that any part [152] of said valuations constituted an assessment upon plaintiff's preferred stock.

XXIV.

Answering paragraph XXIV, defendants admit that the valuations as set up therein were extended to the tax rolls of the several counties therein mentioned but deny that the said valuations are excessive, illegal or void for the reasons set forth in said paragraph or for any reasons whatever.

XXV.

Answering paragraph XXV, defendants admit the allegations of paragraph XXV, and in that behalf allege that the taxes therein mentioned were levied by the respective counties upon the plaintiff's common capital stock and were not levied upon plaintiff's preferred stock, and that they were and are legal and valid.

XXVI.

These defendants admit the allegations of paragraph XXVI except that any part of the taxes was illegal or void and this the defendants deny.

XXVII.

Answering paragraph XXVII, defendants admit the tenders therein alleged; represent that the allegations of the method employed by the plaintiff in arriving at what it deemed to be the correct valua-

tions of the taxes are immaterial; have no knowledge with respect thereto and therefore deny the same; deny that the capital stock of the plaintiff was taxed differently from the capital stock of other banks in Arizona and deny that any part of the taxes levied upon [153] plaintiff's common capital stock was based on the plaintiff's preferred stock, and deny that the percentages assigned to the several counties as alleged in said paragraph were correct.

XXVIII.

Defendants admit the allegations of paragraph XXVIII.

XXIX.

Answering paragraph XXIX these defendants represent to the Court that the allegations of this paragraph are of sections of the Arizona statutes of which this Court takes judicial notice.

XXX.

Answering paragraph XXX defendants admit that the 1936 taxes became payable November 4, 1936, that the plaintiff in that year and since then has owned real estate in all the counties which are defendants to this suit except Yavapai, that many of the owners of plaintiff's shares of stock owned in 1936 and continue to own real estate in one or more of said counties and that the taxes against said shareholders are liens on their real estate, and admit that the shares of stock in plaintiff became subject to seizure and sale for said taxes as provided by the laws of Arizona; that these defendants are

not and have not been advised of what the plaintiff can safely do with respect to transferring shares of its stock or paying dividends thereon or what the plaintiff has actually done since this suit was instituted and therefore deny the allegations that the plaintiff cannot so proceed with safety.

Deny that there was any ambiguity in the assess-
[154] ments made in Pima and Graham Counties and repeat the allegations that said assessments were against the plaintiff's shares of common capital stock.

Admit the stipulation alleged in said paragraph and that the County Treasurer of Pima County did on or about April 10, 1939 give notice that he would proceed to collect taxes assessed in his county against plaintiff's shares of common capital stock.

XXXI.

Answering paragraph XXXI, defendants request the Court to take judicial knowledge of Section 3065 of the Revised Code of Arizona, 1928, and all other constitutional and statutory provisions of that State.

Defendants deny that the remedy provided by said Section 3065 was not available to the plaintiff for the reasons set forth in said paragraph XXXI or for any other reasons;

And in that behalf defendants represent to this Court that the procedure prescribed by said Section 3065 was open and available to the plaintiff and that this Court of equity should not entertain a petition

to enjoin the collection of taxes due to the State of Arizona and the counties defendant hereto for the year 1936.

And defendants represent unto this Court that the plaintiff was bound to employ the method set forth in said Section 3065 and that if so it be that said method is judicial in character, the same was available to the plaintiff not only in the Superior Courts of the State of Arizona but also, by appropriate removal proceedings, in the United States [155] District Court for the District of Arizona, where all of said proceedings could and would have been consolidated or considered and heard together.

XXXII.

Answering paragraph XXXII, defendants represent unto the Court that the allegations thereof, with the exception of the last paragraph, are of sections of the Arizona statutes of which this Court takes judicial notice; that the said allegations are purely argumentative and immaterial for the reason that, as set forth in paragraph XXXIII of plaintiff's bill, the Supreme Court of the State of Arizona has held in the case of Maricopa County v. Hodgin, 46 Ariz. 247, that the taxpayer may bring an action against the county to recover taxes illegally paid, and secure judgment against and payment from said county, notwithstanding the fact that the county authorities had distributed the taxes as collected to the State and municipal authorities.

XXXIII.

Answering paragraph XXXIII, defendants represent to the Court that the reference to the decision of the Supreme Court of Arizona in said paragraph is to said case of Maricopa County v. Hodgin, of which this Court takes judicial notice; that the judgment allowable in an action by a taxpayer against a county is on the same basis as any other judgment against said county and of equal validity.

These defendants deny that the remedies given by the laws of the State of Arizona and particularly Section 3065 and Section 55, Chapter 103 of the Session Laws of 1931, are inadequate. [156]

These defendants represent to the Court that the argument of the plaintiff with respect to the operation of the budget law upon the collection of taxes is immaterial; that if it were accepted no judgment against the county would ever be paid in full; that in truth and in fact under the laws of the State of Arizona all judgments against the defendant counties have been and are promptly paid in full.

And these defendants deny that if the plaintiff had paid its taxes as levied and assessed against its common capital stock in the several counties defendant to this suit, and had secured judgments either under Section 3065 of the 1928 Code or Section 55, Chapter 103 of the Session Laws of 1931, they would not have been promptly paid in full.

Defendants represent that the allegations with respect to the operation of the budget laws of Arizona and the right to proceed against the counties for taxes allegedly illegally collected and the necessity for maintaining more than one suit are of sections of the Arizona statutes of which the Court takes judicial notice; defendants deny that the relief afforded by the provisions of the Arizona law would require a multiplicity of suits by plaintiff or any more suits than would be required of any taxpayer owning property in more than one county and deny that more than one action by plaintiff under Section 55, Chapter 103, Session Laws of 1931 would be necessary.

XXXIV.

Answering paragraph XXXIV, defendants admit that the taxing officials of Pima and Graham Counties take the position that they have the right to value plaintiff's [157] shares of taxable stock in each of such counties at an amount not less than the actual cash value of the real and tangible personal property of the plaintiff situated in their respective counties; deny that said officials of said counties will or do assert that the valuation of plaintiff's preferred stock must be apportioned to Maricopa County; and in that behalf defendants allege that the taxing authorities of said two counties take the position that whenever the valuation of the taxable shares of a bank having branches in several counties as apportioned on the basis of

assets is less than the value of the real and tangible personal property of the bank situated in such county, the value of the taxable stock in such county is increased to the extent of the difference.

Defendants represent that the allegations with respect to an action brought by plaintiff against the several counties defendant hereto as well as other counties for taxes collected from the plaintiff for the year 1937, which was a single action against all of said counties under Section 55, Chapter 103, Session Laws of 1931, and the opinion of the trial court in said action and the attitude of the Supreme Court of Arizona on the availability of certain sections of the Arizona statutes for the recovery of illegally collected taxes are immaterial; and in that behalf defendants represent to the Court that the plaintiff takes the position in said action that Section 3065 is not exclusive under the circumstances of said action and that the remedy by Section 55, Chapter 103, Arizona Session Laws of 1931, is available. [158]

XXXV.

Defendants deny the allegations of paragraph XXXV.

XXXVI.

Defendants deny the allegations of paragraph XXXVI.

XXXVII.

Defendants deny the allegations of paragraph XXXVII.

XXXVIII.

Defendants deny the allegations of paragraph XXXVIII.

XXXIX.

Answering paragraph XXXIX, defendants deny that any part of the taxes mentioned in plaintiff's bill is against the preferred stock of the plaintiff; defendants represent that the sections of the statutes of Arizona and the Act of Congress mentioned in said paragraph are matters of which this Court takes judicial notice; defendants deny that they or any of them have intentionally imposed taxes upon the plaintiff's common shares of stock at a greater rate than those imposed on the common stock of other banks in the State of Arizona, and deny that the taxes upon plaintiff's shares of stock are in violation of Section 1, Article IX of the Constitution of Arizona or Section 548, Title 12, United States Code Annotated.

XL.

Answering paragraph XL defendants represent to the Court that the matters therein contained are not alle- [159] gations of fact and need no denial.

XLI.

And for separate defense, defendants allege that the plaintiff in this action had available to it by the laws of the State of Arizona an administrative remedy, to-wit, that provided by Sections 3056-3062 inclusive, Arizona Revised Code of 1928, where-

in the State Tax Commission of Arizona had full authority to determine the proper valuation to be fixed upon the plaintiff's taxable shares of stock in the several counties in which it was operating in the year 1936 and to settle and determine any and all questions of apportionment of the valuation of plaintiff's taxable stock among such counties; that the plaintiff did not avail itself of such remedy prior to the institution of this suit, or at all.

XLII.

And for separate defense, defendants allege that action taken by the plaintiff before the State Board of Equalization constituted a proceeding under Section 3063, Arizona Revised Code of 1928, and plaintiff, if dissatisfied with the amount of its assessment as fixed by the said Board, had the remedy of appeal therefrom pursuant to the provisions of Section 3065 of the Arizona Revised Code of 1928; that the plaintiff did not avail itself of the remedy therein provided prior to the institution of this suit, or at all.

XLIII.

And for separate defense, defendants allege that if said Section 3065, mentioned in the preceding paragraph of this answer, be held to be judicial in character, as al- [160] leged by the plaintiff, it did afford to the plaintiff a full, complete and adequate remedy available not only in the Courts of the State of Arizona but of the United States District Court for the District of Arizona by removal to the law side thereof.

XLIV.

And for separate defense, defendants allege that Section 55, Chapter 103, Session laws of 1931, did afford to the plaintiff herein a plain, adequate and speedy remedy at law both in the Courts of the State of Arizona and in the United States District Court for the District of Arizona on the law side thereof.

XLV.

And for separate defense, defendants allege that under and pursuant to the laws of the State of Arizona in effect in 1936 and at the present time all taxes become a lien against the taxed property as of January 1 of the taxable year; that prior to the passage of the Act of Congress of March 20, 1936 (see 12 U. S. C. A., Section 51 d) in and by which the Congress of the United States undertook to retroactively destroy the lien of state taxes on preferred stock of national banks, the taxes of which the plaintiff complains had become a lien on the taxable shares of the plaintiff's stock; that if in truth and in fact any part of the taxes were levied against the plaintiff's preferred stock, which these defendants deny, the said Act of Congress was unconstitutional and void in that it deprives the State of Arizona and the counties thereof of their property without due process of law contrary to the Fifth Amendment to the Constitution of the United States. [161]

XLVI.

And for separate defense, defendants allege that said Act of Congress, insofar as it purports to operate retroactively upon the rights of the State of Arizona and the defendant counties to collect taxes for the year 1936, for the payment of which a lien had attached under and pursuant to the laws of the State of Arizona, is the attempted exercise of a power not delegated to the United States by the Constitution of the United States and not prohibited to the State of Arizona and it violates the Tenth Amendment to said Constitution.

XLVII.

For separate defense, defendants allege that said Act of Congress of March 20, 1936 is unconstitutional and void in that the Congress of the United States was without power or authority to annul and destroy property rights lawfully and validly accrued to the State of Arizona in the exercise of its power of taxation to raise revenues for state and county purposes and the attempt so to do by said Act of Congress constitutes an invasion of the sovereign rights of the State of Arizona.

Wherefore, these defendants pray that the plaintiff take nothing by its suit and that they have their costs and such other relief as may be meet and just.

JOE CONWAY
Attorney General, State of Arizona
W. E. POLLEY
Assistant Attorney General

[162]

RICHARD F. HARLESS
County Attorney, Maricopa County
LESLIE C. HARDY
Deputy County Attorney, Maricopa County
CHAS. ROGERS
County Attorney, Graham County
CHARLES L. EWING
County Attorney, Yavapai County
EDWARD Y. WEEKS
County Attorney, Gila County
J. MERCER JOHNSON
County Attorney, Pima County
CONNER & JONES
By: GERALD JONES
Special Attorneys for Pima County, Arizona
303-6 Valley National Building, Tucson, Arizona

[Endorsed]: Service accepted this 24 day of September, 1940. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 24, 1940. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gwen J. Ballard, Deputy Clerk. [163]

[Title of District Court and Cause—E-333, E-350.]

MINUTE ENTRY OF FRIDAY, NOVEMBER 29, 1940

(Phoenix Division)

These cases come on regularly for trial this day, before the Court sitting without a jury.

John L. Gust, Esquire, Harold Divelbess, Esquire, and Charles Rawlins, Esquire, appear as counsel for the plaintiff. Leslie Hardy, Esquire, appears as counsel for defendant Maricopa County, Arizona; Gerald Jones, Esquire, and J. M. Johnson, Esquire, appear as counsel for defendant Pima County, Arizona; Charles L. Ewing, Esquire, appears as counsel for defendant Yavapai County, Arizona; Charles Rogers, Esquire, appears as counsel for defendant Graham County, Arizona; and Earl Anderson, Esquire, appears as counsel for defendants State Tax Commission, etc., and specially for defendant Mojave County, Arizona.

On motion of Gerald Jones, Esquire,

It Is Ordered that Frank E. Tippett, Esquire, be admitted to practice specially herein, and entered as associate counsel for defendant Gila County.

On motion of John L. Gust, Esquire,

It Is Ordered that these cases be consolidated for trial.

On motion of Gerald Jones, Esquire,

It Is Ordered that these cases be consolidated for the purpose of appeal.

Both sides announce ready for trial.

Plaintiff's Case:

The following plaintiff's exhibits are now admitted in evidence:

1. Articles of Incorporation of Valley National Bank.
2. Protest, 1935.
3. Protest, 1936.
4. Statement, 1935.
5. Statement, 1936. [164]

The following witnesses are now duly sworn and examined on behalf of the plaintiff:

James Dismuke

Walter Bimson

Joseph E. Refsnes

Jim D. Brush is now duly sworn and cross-examined by counsel for the plaintiff.

The following plaintiff's exhibits are now admitted in evidence:

6. Copy of tax assessment, 1935, Maricopa County.
7. Copy of tax assessment, 1936, Maricopa County.

Leo J. Finch is now duly sworn and cross-examined by counsel for the plaintiff.

The following plaintiff's exhibits are now admitted in evidence:

8. Copy of Tax Assessment list, 1935, Pima county.
9. Copy of tax assessment list, 1936, Pima County.

10. Copy of tax assessment list, 1936, Yavapai County, in Case No. E-350, only.

N. Letter.

12. Copy of tax assessment list, 1936, Gila County, in Case No. E-350, only.

13. Copy of tax assessment list, 1935, Graham County, in Case No. E-350, only.

14. Copy of tax assessment list, 1936, Graham County, in Case No. E-350, only.

15. Copy of Protest, 1935, in Case No. E-350, only.

16. Copy of Protest, 1936, in Case No. E-350, only.

And thereupon, at the hour of 12:00 o'clock noon, It Is Ordered that the further trial of this case be continued until two o'clock p. m., this day, to which time the respective counsel are excused.

Subsequently, at the hour of two o'clock p. m., respective counsel being present pursuant to recess, further proceedings of trial are had as follows:

Plaintiff's Case Continued:

The following witnesses are now duly sworn and cross-examined by counsel for the plaintiff:

D. C. O'Neil

Thad M. Moore

Alvin Goodman

Jim D. Brush, heretofore sworn, is now recalled and further cross-examined by counsel for the plaintiff.

The following plaintiff's exhibits are now admitted in evidence:

17. Copy of tax assessment list, 1936, Maricopa County

18. Copy of delinquent tax list [165]

George Erhardt is now duly sworn and cross-examined by counsel for the plaintiff.

G. C. Taylor is now duly sworn and examined on behalf of the plaintiff.

J. B. Meade is now duly sworn and cross-examined by counsel for the plaintiff.

Plaintiff's Exhibit 19, Letter and Abstract of Record in Case No. 4342, The Valley National Bank, vs. Apache County, et al, Supreme Court of State of Arizona, is now admitted in evidence.

C. A. Tinker is now sworn and examined on behalf of the plaintiff.

William C. Fitts, Esquire, now makes a statement for the information of the Court on behalf of the Reconstruction Finance Corporation.

Whereupon, the plaintiff rests.

Defendants' Case:

The following Defendants' exhibits are now admitted in evidence:

A. Copy of Minutes of Board of Equalization, dated June 3, 1935.

B. Objection to Assessment, dated June 3, 1936.

And, the defendants rest.

Both sides rest.

It Is Ordered that this case be submitted and by the Court taken under advisement, and

It Is Ordered that the plaintiff be allowed twenty (20) days from the date the Reporter's transcript of this trial is filed in which to file its brief; that the defendant be allowed twenty (20) days thereafter in which to answer; and that the plaintiff be allowed ten 10) days thereafter in which to reply. [166]

[Title of District Court and Cause—E-333, E-350.]

MINUTE ENTRY OF FRIDAY, JUNE 13, 1941

This case having been submitted and by the Court taken under advisement,

It Is Ordered that judgment be entered for the plaintiff. [167]

[Title of District Court and Cause—E-333, E-350.]

ORDER DIRECTING SUBSTITUTION OF PARTIES DEFENDANT, UPON STIPULATION.

Upon stipulations of counsel for the respective parties, on file herein,

It Is Ordered that Jake Linville be substituted for Harry M. Moore, as County Treasurer and Ex Officio Tax Collector of Maricopa County, as a party defendant hereto, and that Charles H. Fields be substituted for C. W. Peterson, as a member of the Board of Supervisors of Maricopa County, as a party defendant hereto, and that when said sub-

stitutions are made the officers representing Maricopa County as parties defendant to this cause will be as follows:

Jake Linville, as County Treasurer and Ex Officio Tax Collector of Maricopa County, Arizona

J. D. Brush, as County Assessor of Maricopa County, Arizona, and

John A. Foote, Geo. Frye and Charles H. Fields, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

It Is Further Ordered that Thomas Collins be substituted for Warren A. Grossetta, as a member of the Board of Supervisors of Pima County, Arizona, and that when said substitution is made, the officers representing Pima County as parties defendant to this cause, will be as follows:

Walter S. Bransford, as County Treasurer and Ex Officio Tax Collector of Pima County, Arizona,

Charles M. Taylor, as County Assessor of Pima County, Arizona,

R. H. Martin, J. B. Mead and Thomas Collins as Members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

It Is Further Ordered that Earl M. Lines be substituted for Charles M. Geitz, as County Treasurer and Ex Officio Tax Collector of Graham County,

Arizona, and M. E. Dubois and M. M. Larson be substituted for J. W. Greenhalgh [168] and Virgil McEuen, as members of the Board of Supervisors of Graham County, Arizona, and that when said substitutions are made, the officers representing Graham County as parties defendant to said cause, will be as follows:

Earl M. Lines, as County Treasurer and Ex-Officio Tax Collector of Graham County, Arizona,

Alvin Goodman, as County Assessor of Graham County, and

M. E. Dubois, M. M. Larson and Glen Hoopes, as members of and constituting the Board of Supervisors, and County Board of Equalization of Graham County, Arizona.

Dated this 26 day of June, 1941.

DAVE W. LING
Judge of the District Court

[Title of District Court and Cause—E-333.]

Petition of defendants to Extend Time for Filing Objections and Exceptions to Proposed Findings of Fact and Conclusions of Law and to Proposed Judgment Enjoining Collections of Taxes having been presented to the Court, the following order is now entered:

ORDER

Upon reading and considering the foregoing petition,

It Is Ordered that the time for the defendants, and each of them, to file their objections and exceptions to the proposed findings of fact and conclusions of law, and the proposed judgment enjoining collection of taxes, now lodged with the Clerk of this Court, is hereby extended to and including September 15, 1941.

Dated this 26 day of June, 1941.

DAVE W. LING,
Judge [169]

[Title of District Court and Cause—E-350.]

ORDER DIRECTING SUBSTITUTION OF PARTIES DEFENDANT, UPON STIPULATION.

Upon stipulation of counsel for the respective parties, on file herein,

It Is Ordered that Jake Linville be substituted for Harry M. Moore, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, as a party defendant hereto, and that Charles H. Fields be substituted for C. W. Peterson, as a member of the Board of Supervisors of Maricopa County, as a party defendant hereto, and that when said substitutions are made the officers representing Maricopa County as parties defendant to this cause will be as follows:

Jake Linville, as County Treasurer and Ex-

Officio Tax Collector of Maricopa County, Arizona,

J. D. Brush, as County Assessor of Maricopa County, Arizona, and

John A. Foote, Geo. Frye and Charles H. Fields, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

It Is Further Ordered that Thomas Collins be substituted for Warren A. Grossetta, as a member of the Board of Supervisors of Pima County, Arizona, and that when said substitution is made, the officers representing Pima County as parties defendant to this cause, will be as follows:

Walter S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona,

Charles M. Taylor, as County Assessor of Pima County, Arizona,

R. H. Martin, J. B. Mead and Thomas Collins, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

It Is Further Ordered that Earl M. Lines be substituted for Charles Geitz, as County Treasurer and Ex-Officio Tax Collector of Graham County, Arizona, and M. E. Dubois and M. M. Larson be substituted for J. W. Greenhalgh and Virgil McEuen, as members of the Board of Supervisors of Graham County, [170] Arizona, and that when said substitutions are made, the officers representing

Graham County as parties defendant to said cause, will be as follows:

Earl M. Lines, as County Treasurer and Ex-Officio Tax Collector of Graham County, Arizona,

Alvin Goodman, as County Assessor of Graham County, and

M. E. Dubois, M. M. Larson and Glen Hoopes, as members of and constituting the Board of Supervisors, and County Board of Equalization of Graham County, Arizona.

It Is Further Ordered that Harry Marshall be substituted for David H. Biles, as County Treasurer and Ex-Officio Tax Collector of Yavapai County and David H. Biles be substituted for C. H. Riebeling, as County Assessor of Yavapai County, and that Ralph G. Reid be substituted for T. B. Jones, as a member of the Board of Supervisors of Yavapai County, Arizona, as parties defendant, and that when said substitutions are made, the officers representing Yavapai County as parties defendant to said cause, will be as follows:

Harry Marshall, as County Treasurer and Ex-Officio Tax Collector of Yavapai County, Arizona,

David H. Biles, as County Assessor of Yavapai County, Arizona, and

W. M. Byers, Ralph G. Reid and C. C. Jackson, as members of and constituting the Board of Supervisors, and County Board of Equalization of Yavapai County, Arizona.

It Is Further Ordered that Cyril Kennedy be substituted for Frank H. Thomas, as County Treasurer and Ex-Officio Tax Collector of Gila County, Arizona, and Margarite T. Harding be substituted for W. G. Duncan, as County Assessor of Gila County, Arizona, and that when said substitutions are made, the officers representing Gila County as parties defendant to said cause, will be as follows:

Cyril Kennedy, as County Treasurer and Ex-Officio Tax Collector of Gila County, Arizona,

Margarite T. Harding, as County Assessor of Gila County, Arizona, and

John H. Armer, Charles Curnow and L. F. Quinn, as members of and constituting the Board of Supervisors and County Board of Equalization of Gila County, Arizona.

It Is Further Ordered that C. W. Peterson be substituted for [171] Frank Luke, as a member of the State Tax Commission and the State Board of Equalization of the State of Arizona, and that when said substitution is made, the officers representing the State of Arizona as parties defendant to said cause, will be as follows:

Thad M. Moore, D. C. O'Neil and C. W. Peterson, as Members of and Constituting the State Tax Commission and the State Board of Equalization of the State of Arizona.

Dated this 26 day of June, 1941.

DAVE W. LING,
Judge of the District Court.

[Title of District Court and Cause.—E-350.]

Petition of defendants to Extend Time for Filing Objections and Exceptions to Proposed Findings of Fact and Conclusions of Law and to Proposed Judgment Enjoining Collections of Taxes having been presented to the Court, the following order is now entered:

ORDER

Upon reading and considering the foregoing petition,

It Is Ordered that the time for the defendants, and each of them, to file their objections and exceptions to the proposed findings of fact and conclusions of law, and the proposed judgment enjoining collection of taxes now lodged with the Clerk of this Court, is hereby extended to and including September 15, 1941.

Dated this 26 day of June, 1941.

DAVE W. LING,
Judge [172]

[Title of District Court and Cause—E-333.]

MINUTE ENTRY OF WEDNESDAY, OCTOBER 8, 1941

It is ordered that the objections of Maricopa County, Arizona, et al, and of Pima County, Arizona, et al, to Plaintiff's Proposed Findings of Fact and Conclusions of Law be, and they are hereby overruled.

It is further ordered that Plaintiff's Proposed Findings of Fact and Conclusions of Law and suggested amendments thereto be, and they are hereby adopted.

It is further ordered that the form of judgment for Plaintiff heretofore proposed, as now amended, be filed, entered and spread on the minutes as the judgment in this case, as follows:

[Title of District Court and Cause—E-333.]

JUDGMENT ENJOINING COLLECTION OF TAXES

This cause came on regularly for trial on the 29th day of November, 1940, before the Honorable Dave W. Ling, Judge of the District Court of the United States for the District of Arizona, a jury having been waived by all parties to said cause. Evidence having been received and the trial concluded on said date, the case was submitted to the court for its consideration by counsel for the respective parties.

The court, after due consideraton having found the issues in favor of plaintiff and Findings of Fact and Conclusions of Law having been signed by the court and filed herein;

It is ordered, adjudged and decreed that the following taxes for the tax year of 1935, were legally levied against the holders of the shares of common stock of the plaintiff and were payable by the plaintiff as and for state, county, school district and other local taxes (except City of Phoenix taxes) and were collectible by the respective County

Treasurers of said counties from the plaintiff as follows:

Maricopa County	$17,938.09
Pima County	8,637.30
Graham County	808.58
Mohave County	298.78

[173]

That all other and further taxes levied or assessed or attempted to be levied and assessed as state, county, school district and other local taxes (except City of Phoenix taxes) in the above named counties for the year 1935, upon plaintiff's shares of stock or as payable by plaintiff were and are illegal and void.

That in pursuance of a stipulation entered into by the plaintiff with the respective County Treasurers, who are parties to this suit, approved by the order of this court in this cause, all of the above mentioned taxes found to be legal and valid have been paid by the plaintiff to the respective County Treasurers and that by such payment all state, county, school district and other local taxes collectible from plaintiff by the County Treasurers of the above named counties (except City of Phoenix taxes) have been fully paid; that the defendants hereto have no legal right, power or authority to levy or cause to be levied any further taxes against the plaintiff or its shareholders payable in the aforesaid counties as and for taxes for the year 1935.

It is further ordered, adjudged and decreed that the respective County Treasurers of the four counties herein named, their deputies, agents and servants be and they hereby are permanently restrained and enjoined from collecting any further moneys from the plaintiff or its shareholders as and for state, county, school district or other local taxes for the tax year 1935, (except City of Phoenix taxes) and that plaintiff have and recover from the defendants its costs herein incurred to be taxed by the Clerk of this court.

Done in open court this 8th day of October, 1941.

[174]

[Title of District Court and Cause—E-333.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause regularly having come on for trial upon plaintiff's second amended and supplemental bill of complaint and the joint and several answers of defendants to second amended and supplemental bill of complaint upon the 29th day of November, 1940, and the court having heard the evidence of the parties without a jury and the cause having been submitted for the consideration of the court by counsel for the respective parties, upon due consideration the court finds the following facts:

I.

That plaintiff is, and was at all times since the 11th day of February, 1935, a corporation, duly in-

corporated as a national banking association under the laws of the United States o f America, and authorized to do a banking business in the State of Arizona, having its principal banking house at Phoenix, Maricopa County, Arizona, and branches in other cities and towns in the County of Maricopa, and in cities and towns in the counties of Pima, Graham, Mohave, Gila, Greenlee, Pinal and Yavapai.

That plaintiff brings this suit in its own behalf and in behalf and as the agent of the holders of its common stock. [175]

That the defendants, Maricopa County, Pima County, Graham County, and Mohave County, each are and at all times herein mentioned, were duly organized and existing counties of the State of Arizona, and political subdivisions of said state;

That Harry M. Moore is a citizen and resident of Maricopa County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that after the filing of said original complaint he was succeeded in said office by Ed. Oglesby, a citizen and resident of said Maricopa County, and that said Ed. Oglesby was duly substituted in place of said Harry M. Moore as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Maricopa County, and as such officer was a party defendant at the time of the trial and that thereafter on or about

the 4th day of January, 1941, W. H. Linville succeeded the said Ed. Oglesby as such County Treasurer and Ex Officio Tax Collector, and was regularly substituted as a party defendant hereto as such County Treasurer and Ex Officio Tax Collector;

That the defendant, J. D. Brush, is a citizen and resident of Maricopa County, Arizona, and is the duly elected, qualified and acting County Assessor of said County, and is sued herein as such officer;

That the defendants John A. Foote and Geo. Frye, are citizens and residents of Maricopa County, Arizona, and are now and at all times herein mentioned were duly elected, qualified and acting members of the Board of Supervisors of said Maricopa County and the County Board of Equalization of said county;

That at the time of the filing of the original complaint herein C. W. Peterson, a citizen and resident of Maricopa [176] County, Arizona, was the third member of said County Board of Supervisors and said County Board of Equalization and that said C. W. Peterson has been succeeded in said offices by Charles H. Fields, a citizen and resident of Maricopa County who has been regularly substituted for said C. W. Peterson as a party defendant to this suit as such officer;

That Daniel E. Garvey is a citizen and resident of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting county treas-

urer, and Ex Officio Tax Collector of said county; that since the filing of said original complaint, Wallace Bransford, a citizen and resident of Pima County, Arizona, has succeeded said Daniel E. Garvey as County Treasurer and Ex Officio Tax Collector of said county, and is sued herein as such officer, having been legally substituted as a party defendant in said cause in place of the said Daniel E. Garvey;

That the defendant Charles M. Taylor, is a citizen and resident of Pima County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer.

That Warren A. Grossetta, R. H. Martin and J. B. Mead are citizens and residents of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of the Board of Supervisors of said Pima County and the Board of Equalization of said county;

That since the filing of the original complaint in this cause, Thomas Collins, a citizen and resident of Pima County, Arizona, has been duly elected a member of the Board of Supervisors of Pima County, Arizona, to succeed Warren A. Grossetta, and that said Thomas Collins, R. H. Martin and [177] J. B. Mead do now constitute the Board of Supervisors of Pima County, Arizona, and are sued herein as such officers, the said Thomas Collins having been substituted as a party defendant in place of Warren A. Grossetta;

That Charles M. Geitz was a citizen and resident of Graham County, Arizona, and was the duly elected, qualified and Acting County Treasurer and Ex Officio Tax Collector of said county at the time of the filing of the original complaint in this cause; that since the filing of the original complaint in this cause Earl M. Lines has succeeded the said Charles M. Geitz as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county and is sued herein as such officer, having been substituted as a party defendant in place of said Charles M. Geitz;

That the defendant, Alvin Goodman, is a citizen and resident of Graham County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

That J. W. Greenhalgh, Glen Hoopes and Virgil McEuen, are citizens and residents of Graham County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of and constituted the Board of Supervisors of said Graham County, and the County Board of Equalization of said county;

That after the filing of the original complaint in this cause, Ernest D. Householder and M. E. Dubois, citizens and residents of Graham County, Arizona, succeeded J. W. Greenhalgh and Virgil McEuen as members of the Board of Supervisors of

said Graham County, and the said Glen Hoopes, Ernest D. Householder and M. E. Dubois thereafter constituted the Board of Supervisors of said Graham County and the Board of Equalization of said county, and were substituted as parties defendant in [178] the place of J. W. Greenhalgh and Virgil McEuen; and that thereafter M. M. Larson succeeded Ernest D. Householder as a member of said Board of Supervisors and said County Board of Equalization and thereupon said M. M. Larson was regularly substituted for said Ernest D. Householder as a party defendant to this suit as such officer;

That C. B. Tatum is a citizen and resident of Mohave County, Arizona, and at the time of the filing of the original complaint in this cause was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint he has been succeeded in said office by A. M. Cook, a citizen and resident of Mohave County, and that said A. M. Cook is now the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Mohave County, Arizona, and is sued herein as such officer, having been duly substituted as a party defendant in the place of said C. B. Tatum;

That the defendant, W. O. Ruggles is a citizen and resident of Mohave County, Arizona, and is the

duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

That the defendants, F. L. Hunt, W. D. Lawe and E. T. Lyons are citizens and residents of Mohave County, Arizona, and at the time of the filing of the original complaint in this cause were the duly elected, qualified and acting members of the Board of Supervisors of said Mohave County, and the Board of Equalization of said county; that since the filing of the original complaint in this cause, William Mackie and George F. Moser, each a citizen and resident of Mohave County, Arizona, have been duly elected members of the Board of Supervisors of Mohave County, Arizona, to succeed F. L. Hunt and E. T. Lyons, and that said W. D. Lawe, William Mackie [179] and George F. Moser, do now constitute the Board of Supervisors of Mohave County, Arizona, and are sued herein as such officers, the said William Mackie and George F. Moser having been substituted as parties defendant in place of F. L. Hunt and E. T. Lyons.

That at the time of filing the original complaint herein, Frank Luke, Thad M. Moore and C. D. O'Neil were residents of Maricopa County, Arizona, and were the duly elected, qualified and acting members of and constituted the State Tax Commission and State Board of Equalization of the State of Arizona; that thereafter the said Frank Luke died and was succeeded as such tax commissioner and member of State Board of Equalization by C. W.

Peterson, who was thereupon regularly substituted as a party defendant hereto in place of said Frank Lake and that said C. W. Peterson is a citizen and resident of Maricopa County, Arizona, and is now a party to this suit as a member of the Tax Commission and State Board of Equalization of the State of Arizona.

That all of the successor parties hereto have adopted the acts of their predecessors which have relation to the collection of the taxes herein sought to be enjoined and continue the threats of their predecessors to enforce payment of said taxes.

II.

That this is a suit of a civil nature, in equity, arising under the Constitution and laws of the United States, and that the amount involved herein, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

III.

That the plaintiff now exercises, and from and since the 11th day of February, 1935, has exercised in the City of [180] Phoenix, and the Cities of Glendale and Mesa, in Maricopa County, Arizona; in the city of Tucson, and the town of Ajo, in Pima County, Arizona, in the town of Safford, Graham County, Arizona, in the city of Kingman, Mohave County, Arizona, and in the cities of Globe and Miami, and town of Hayden, in Gila County, Ari-

zona, in the town of Clifton, Greenlee County, Arizona, in the towns of Superior, Coolidge and Casa Grande, in Pima County, Arizona, and in the city of Prescott, Yavapai County, Arizona, normal banking powers conferred upon it by law as a national banking association, including the receiving of commercial deposits, demand and time saving deposits, evidenced by certificates of deposit, the purchase and sale of government, state and municipal bonds, the maintenance of a trust department, the purchase and discount of commercial paper, the loaning of money on financial statements, and upon collateral security, and upon real estate and chattel mortgages executed to the plaintiff or assigned to and deposited with it as collateral security, and the investment of money in notes, bonds and mortgages and other securities, and evidences of indebtedness.

IV.

That it was and is provided by Section 1, of Article IX of the Constitution of the State of Arizona, that all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.

That it was and is provided by Section 2, of Article IX of the Constitution of the State of Arizona, that there shall be exempt from taxation all federal, state, county and municipal property.

That it was and is provided by Section 3068, Revised Code of Arizona for 1928, that all taxable

property within said state must be assessed at its full cash value, and that [181] the term, "full cash value" shall mean the price for which property would sell if voluntarily offered for sale by the owner thereof upon such terms as such property is usually sold, and not the price that might be realized if such property were sold at a forced sale.

That it was and is provided by Section 3069, Revised Code of Arizona for 1928, as amended by Chapter 110, Session Laws of Arizona for 1931, that the property of corporations shall be assessed and taxed, and no assessment shall be made on shares of stock of corporations, nor shall any holder thereof be taxed for such shares, but that said provisions with reference to the taxing of shares of stock shall not apply to banking corporations, building and loan associations or corporations, and corporations or associations engaged in the business of using money wherewith to make money for the owners of their shares, and that the shares of stock of such banking corporations, and other corporations and associations shall be assessed and taxed as other property in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of and be payable by such corporation or association.

V.

That it was and is provided by Section 11, of Article IX of the Constitution of Arizona, that the manner, method and mode of assessing, equalizing,

and levying taxes in the State of Arizona, shall be such as may be prescribed by law.

That it was and is provided by Section 3074, Revised Code of Arizona, 1928, that between the first Monday in January, and the first day of May, of each year, the County assessor, (excepting as otherwise required by the State Tax Commission) shall ascertain by diligent inquiry and examination all property in his county subject to taxation, the names of all persons owning, claiming, or having possession or control [182] thereof, determine the full cash value of all such property, and list and assess the same to the person owning, claiming or having the possession, charge, or control thereof.

That it was and is provided by Section 3070, Revised Code of Arizona for 1928, that upon the demand of the Assessor the officers in charge of any banking corporation or corporations or association engaged in the business of using money wherewith to make money, shall, make out and deliver to the assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares owned by him, the surplus, reserve fund and undivided profits, and the par and market value of the shares, and that the full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return to any officer of the state or the United States, from actual sales of the stock, or from other trustworthy sources, and that every such shareholder shall, where

such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein; and if the shareholder fail to do so the assessor shall list and assess such unrendered shares as other unrendered property, and that the taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3071, Revised Code of Arizona for 1928, that every such corporation or association for the purpose of said assessment shall be con- [183] sidered as located in every county, city or town wherein it has an office for the purpose of carrying on its business, and the shares shall be subject to taxation in any county, city or town wherein it has such office, that the officer of such corporation or association shall state in his statement if his association or corporation is subject to taxation in more than one county, city or town, and the proportion of its assets situated in each thereof, and that the shares of such corporation or association shall be taxed in each county, city or town, for only such portion of their assets as the assets situated in that county, city or town bear to the assets of the entire corporation or asso-

ciation, and that when a bank maintains branches or conducts business in more than one county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches are maintained or business conducted, and the amount apportioned to each county, city or town shall not be less than the actual cash value of the real and personal property of such bank situated in such county, city or town.

VI.

That on the 11th day of February, 1935, the day plaintiff engaged in the banking business as a national bank, and at all times thereafter until after the first Monday in May, 1935, the amount of its capital stock was $260,000.00, its surplus was $260,000.00, its undivided profits were $90,026.52, and its resources $89,000.00, making a total as the basis for the valuation of its shares of common capital stock of $699,026.52. That its common capital stock consisted of 52,000 shares, of the par value of $5.00 each. That to provide the plaintiff with sufficient capital to enable it to comply with the laws and regulations pertaining to national banks in the acquisition and [184] transaction of the banking business which it acquired on said 11th day of February, 1935, the Reconstruction Finance Corporation of the United States of America, purchased from the plaintiff, and the plaintiff sold to said Reconstruction Finance Corporation, $1,240,000.00 par

value of preferred stock. That said preferred stock so issued and sold to said Reconstruction Finance Corporation consisted of 198,400 shares of the par value of $6.25 each, and that all of said preferred stock was issued to said Reconstruction Finance Corporation, and said Reconstruction Finance Corporation paid to plaintiff therefor the par value thereof, on or prior to said 11th day of February, 1935, and ever since the issuance thereof said preferred stock has been and now is owned and held by and is the property of the Reconstruction Finance Corporation of the United States of America.

VII.

That after the 11th day of February, 1935, and prior to the first day of May, 1935, an officer of the plaintiff, duly authorized for said purpose, made and delivered a statement such as is provided for by Sections 3070 and 3071, Revised Code of Arizona for 1928, to each of the assessors of the respective counties in which its main office or any of its branches was and is situated, including all of the counties made parties defendant to this suit. That each of said statements showed the number of plaintiff's shares, the names and residences of each shareholder owning and holding the shares of its common stock and the shares of its preferred stock above mentioned, the number of shares owned by each shareholder, the amount of capital, surplus and undivided profits, as above stated, and the par value of its shares, both common and preferred, as is

required by Section 3071, Revised Code of Arizona, 1928. Each of said statements showed the proportion of plaintiff's [185] assets situated in each of the counties in which its principal office or a branch thereof was and is situated. That said statement showed the common capital stock of the plaintiff was $260,000.00, that its surplus was $260,000.00, that its undivided profits were $90,026.52, and that its reserves were $89,000.00, making a total as the basis for the valuation of its common capital stock of $699,026.52. That said statement also showed that the following percentages of said amount were properly apportioned to the respective counties, to-wit:

Maricopa County	54.57 per cent
Pima County	26.53 per cent
Graham County	2.34 per cent
Mohave County	1.37 per cent
Gila County	6.86 per cent
Greenlee County	3.32 per cent
Pinal County	3.22 per cent
Yavapai County	1.79 per cent

VIII.

That prior to the year 1934, it was the practice followed by the county assessors of the several counties of the state of Arizona, to value for tax purposes the shares of stock of each of the banks in the State of Arizona at an aggregate amount equal to the capital stock, surplus and undivided profits of each of said banks, as shown by the books of

said bank, and that in the year 1934, all or substantially all of the banks in the State of Arizona protested to the State Tax Commission of the State of Arizona, sitting as a Board of Equalization, against the valuation of their shares of stock on said basis, for the reason that the same constituted an assessment of the capital stock of said banks at its full cash value, when other classes of property in said state were assessed at an amount equal to 60% of their cash value, and that in the consideration of said protests, said State Tax Commission, sitting as a Board of Equalization, in the year 1934, made [186] a thorough examination of the valuation of shares of bank stock in the state of Arizona, and after such examination ordered that shares of bank stock should be valued by the following method: (1) That the statements filed by said banks should be revised and corrected by the use of the best information available; (2) That the shares of stock should be valued at 75% of the capital stock, surplus and undivided profits as shown by said revision of the banks statement. That said Tax Commission made no determination with reference to the taxability of shares of preferred stock of banks owned and held by Reconstruction Finance Corporation, and expressly left that question to be determined by the courts.

IX.

That the State Tax Commission of the State of Arizona, said Tax Commission consisting of the

same individuals as the State Board of Equalization, in the exercise of its supervisory powers over the county assessors of the State of Arizona, directed the county assessors of the State of Arizona to value for tax purposes for the year 1935, the shares of stock of all banks in the state at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks, and that the county assessors of the several counties of the state, (except the county assessor of Mohave county) valued for tax purposes for the year 1935 the capital stock of all banks in their respective counties at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks as shown by the books of said banks.

X.

That in the year 1934 the taxing officials of the State of Arizona, under the direction of the State Tax Commission and State Board of Equalization, for the purpose of equalizing the valuation of shares of bank stock with the valuation of [187] other kinds and classes of property, adopted the general plan or policy of assessing the stock of all banks at an amount equal to 75% of the book value of the stock as shown by the bank's statement after proper checking and inquiry satisfied them that the statement fairly reflected the bank's condition. That said general plan or policy was continued to the year 1939, or perhaps longer.

XI.

That the assessments of plaintiff's shares of stock in the Counties of Gila, Greenlee, Pinal and Yavapai, for the year 1935 were in accord with the aforesaid general plan or policy and were not contested by plaintiff.

XII.

That the County Assessor of Maricopa County arrived at the valuation to be placed upon plaintiff's shares of stock for tax purposes for the year 1935 by adding together the amount of the common capital stock, surplus, undivided profits and reserves shown by the statement filed by him as aforesaid, and adding to the amount so arrived at the sum of $1,240,000.00, being the par value of the preferred stock of plaintiff issued to and owned and held by the Reconstruction Finance Corporation, as hereinbefore alleged, the total so arrived at being the sum of $1,939,026.00. Said county assessor then took 54.57 per cent of said sum, (said 54.57% being the percentage shown by the statement filed with him by plaintiff as the percentage properly apportioned to Maricopa County), thus arriving at $1,058,126.77 as the amount apportioned to Maricopa County, and then computed 75% of said amount, making the sum of $793,595.08, which sum said assessor placed on the tax roll as the assessable value of plaintiff's shares of stock for tax purposes for the year 1935 in said Maricopa County. [188] That of the aforesaid valuation of $793,595.08, 54.57% of 75% of $1,240,000.00, or $507,501.00, was and is the valua-

tion placed by said county assessor upon Maricopa County's proportion of the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation. That said County assessor intended to and did assess plaintiff's shares of preferred stock owned and held by Reconstruction Finance Corporation at said amount of $507,501.00.

XIII.

That the county assessor of Pima County assessed the shares of stock of the plaintiff in said county by placing a valuation on the real and personal property owned and held by the plaintiff in said county as follows, to-wit:

"ASSESSED VALUATION OF VALLEY NATIONAL BANK OF ARIZONA, PIMA COUNTY

1935

Co-Apportionment—13,795.6 shares of stock @ $23.7459
Totalling $327,590.00

REAL ESTATE, IMPROVEMENTS & PERSONAL PROPERTY HOLDINGS OF VALLEY NATIONAL BANK OF ARIZONA, PIMA COUNTY.

1935

Description of Property	Lot	Blk	Real Estate Valuation	Imps. Valuation	Personal Prop. Valuation
Ajo	4	15	125		
Ajo	5	15	150	1405	785.00
Tucson S 62' of N 123.04' of W. 72.94' of Lot 3 10		208	13,020		
Tucson N 58' of W 64.73' of Lot 3 together with a 3' strip on S—sub 12		208	27,945	171130	110,000.00
Rincon Heights	13	8	110		
Rincon Heights	14	8	110	1370	

Description of Property	Lot	Blk	Real Estate Valuation	Imps. Valuation	Personal Prop. Valuation
S½SW¼SW¼SW¼ (3)	21-13-14	D-4	Acres 10		
		W-1	" 5		
E½SW¼ less parcel 1 & 5 (4)	26-13-14	D-58.81a	335		
					[189]
S½SE¼NW¼ & NW¼ SE¼NW¼ & E½SE¼ NW¼ (6)	27-13-14	P-20a	220		
		W-15a	15		
S½SW¼NW¼ (8)	27-13-14	P-17a	190	55	
		W-3a	5		
S½SW¼NW¼ (17)	27-13-14	1-5	115		
		W-15	15		
Part of N½ S½ of Sec 28 lying N of Rillito R (18)	28-13-14	D-25	75		
		W-31.3	30		
E½SW¼NW¼ 7 E½ NW¼SW¼NW¼ 7 E½SW¼SW¼NW¼ (23)	28-13-14	P-10	110		
		D-10	30		
		W-7.5	10		
S½S½SW¼NE¼ (28)	28-13-14	1-5	115		
		D-10	60		
E½ of SW¼NW¼NW¼ & E½NW¼NW¼NW¼ (42)	28-18-14	P-4.6	20		
		W-5.9	5		
		Total	$327,590.00		

Detail of Personal Property:

Bank Fixtures $110,000.

Bank Fixtures in Ajo 875."

XIV.

That it appears from the foregoing computation made by the county assessor of Pima County that the valuation arrived at by said county assessor in Pima County for the year 1935, was $327,590.00. That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon the tangible real and personal property owned by plaintiff in said county, or upon plaintiff's common capital stock, or upon plaintiff's preferred stock. If said valuation is construed as imposed upon plaintiff's real and personal property, it is wholly void as unauthorized by the statutes of the state of Arizona, and if it is construed as imposed upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Pima county of approximately $6.30 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all [190] counties of approximately $23.75 per share.

XV.

That the aforesaid valuation of the county assessor of Pima county was excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, the undivided profits of $90,926.52, and the reserves of $89,000.00, is $699,026.52, which represents the shares of common capital stock of the plaintiff. Of this amount 26.53%, or the sum of $185,451.73 is properly apportioned to Pima county, representing that portion of plaintiff's shares of common stock

apportioned to Pima county. To make allowance for probable shrinkage in book assets, and the normal difference between the book value of assets and the actual value of the shares of stock and to equalize with valuation of other kinds and classes of property in accordance with the method prescribed by the State Tax Commission as aforesaid, one-fourth thereof, or the sum of $46,362.93 must be deducted, leaving the amount of $139,088.80 as the actual cash value for the year 1935, of that portion of plaintiff's shares of common stock which is assessable in Pima county; that the excess over said sum of $139,088.80 assessed against the shares of stock of plaintiff by the county assessor of Pima County which is the amount of $188,501.20, was assessed on account of valuations represented by plaintiff's preferred stock owned and held by the Reconstruction Finance Corporation.

XVI.

That the County Assessor of Graham County assessed the shares of stock of the plaintiff in said county by placing a valuation on the real and personal property owned and held by the plaintiff in said county as follows:

West 30 feet of Lot 1, Safford, Block 29:	
Value of Land	$ 2,250.00
Value of Improvements	14,615.00
	[191]
Lot 8, K & G, Block 2:	
Value of Land	$ 120.00
Summary of Values:	
Total personal property	$ 5,605.00
Total Real Estate	2,370.00
Total improvements	14,615.00
Total for County and State taxation	$22,590.00

That in addition to the foregoing, said Assessor assessed certain real estate acquired by the plaintiff in the year 1935, prior to the date that the above and foregoing assessment was made, from The Consolidated National Bank of Tucson, as follows:

Northwest Quarter ($NW^1/_4$) and West Half ($W^1/_2$) of the Northeast Quarter ($NE^1/_4$) and Northwest Quarter ($NW^1/_4$) of the Southeast Quarter ($SE^1/_4$) of Section 21, Township 6, Range 25:	
Acres	142
Class of Land	CU.
Value of Land	$4,050.00
Lots One (1) and Two (2), Section 21, Township 6, Range 25:	
Acres	50
Class of Land	CU.
Value of Land	$1,420.00
Value of Improvements	1,200.00
Consolidated National Bank:	
Acres	125
Class of Land	W.
Value of Land	$ 125.00
Total Real Estate	$5,595.00
Total Improvements	1,200.00
Total for County and State Taxes	$6,795.00

That all of the foregoing property of plaintiff assessed by said county assessor of Graham county was acquired by plaintiff on or prior to the 11th day of February, 1935, from The Valley Bank & Trust Company, a State Bank, and the Consolidated National Bank of Tucson, a National Banking Association, both of which institutions were actively engaged in transacting a banking business at and prior to the time when said property was transferred by them to the plaintiff and that all of said [192] property was included in the statement of capital, surplus, undivided profits and reserves filed by the plaintiff with said county assessor as aforesaid.

XVII.

That the total amount of the Assessment in Graham county, being the sum of $22,590.00, plus $6,795.00, or $29,385.00, as shown by the above tabulations, was arrived at by said county assessor by taking the assessable value of all of the real and personal property owned by the plaintiff in said county. That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon the real and personal property owned by the plaintiff in said county, or whether it was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If construed as imposed upon the tangible real and personal property of plaintiff in said county, it is wholly unauthorized and void under the statutes of the State of Arizona. If it is construed as imposed upon plaintiff's common stock,

it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Graham county, of approximately .56¢ per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of approximately $24.00 per share. That the aforesaid valuation by said county assessor of Graham county was and is excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, and the undivided profits of $90,026.52, and the reserves of $89,000.00 which represents the shares of common capital stock of plaintiff, is $699,026.52. Of this amount, 2.34%, or $16,357.22, is properly apportioned to Graham county, representing that portion of plaintiff's shares of common stock apportioned to Graham county. From said sum must be deducted [193] one-fourth thereof, or the sum of $4,089.80 to make allowance for probable shrinkage in book assets and the normal difference between the book value of the assets and the actual value of the shares of stock, and to equalize with valuations of other kinds and classes of property, in accordance with the method prescribed by the State Tax Commission, as aforesaid, leaving the amount of $12,267.42 as the true valuation for tax purposes for the year 1935 of that portion of plaintiff's shares of common stock which is assessable in Graham county. That the valuation arrived at by the county assessor of Graham county in excess of said sum of $12,267.42, said excess being $17,117.58, was assessed upon values represented by preferred stock

of the plaintiff owned and held by the Reconstruction Finance Corporation.

XVIII.

That if the aforesaid assessments by the county assessors of Pima and Graham counties are construed as assessments and valuations of the property owned and held by the plaintiff in said counties as other property held by individuals and other corporations of said counties are assessed and valued, and assessments and valuations are wholly unauthorized and void for the reason that under the provisions of Section 3069, Revised Code of Arizona for 1928, and the decisions of the Supreme Court of Arizona construing said section, the property of banking associations or corporations engaged in the business of banking is not assessable or taxable, but only the shares of stock of such banking association or corporations are assessable and taxable.

That if the aforesaid assessments and valuations in Pima and Graham counties are construed as assessments and valuations of the shares of stock of the plaintiff, both common and preferred, and the taxes computed thereon payable by the holders [194] of the common and preferred stock, said assessments and valuations are wholly void for the reason that said shares of preferred stock being owned and held by the Reconstruction Finance Corporation of the United States, are wholly exempt from state, county and local taxation under the Constitution and laws of the United States, and

the Constitution and laws of the State of Arizona, and said assessments do not segregate the valuation placed upon the shares of common stock from the valuation placed upon the shares of preferred stock. That the shares of preferred stock of plaintiff are preferred both as to dividends and as to distribution of assets in case of liquidation, and are limited to participation in dividends and in distribution of assets in the event of liquidation, and that as a result of such preferences and limitations so conferred and imposed upon them, the relation of the actual value of said shares to the par value thereof is not the same as the relation of the actual value of the shares of common stock to the par value of said common shares.

That if the aforesaid assessments in Pima and Graham counties are construed as assessments and valuations of the shares of common stock of the plaintiff, and the taxes computed thereon payable wholly by the owners of said shares of common stock, then such assessments and valuations are wholly void, for the reason that the same are excessive, confiscatory and discriminatory, greatly in excess of the actual value of said common shares, and discriminatory between the holders of said shares of common stock and the holders of common shares of stock in other banks, and also between the holders of the shares of common stock in the plaintiff, and other classes of property assessed in said counties of Pima and Graham, and in said state of Arizona, for the following reasons:

1. That said assessments and valuations are void

and [195] confiscatory for the reason that in Pima county the sum of $188,501.20 of the total assessment of $327,590.00, and in Graham county the sum of $17,117.58 of the total assessment of $29,385.00, is assessed against said shares of common stock, not by reason of any assets represented by said shares of common stock, or by reason of any inherent value of said shares of common stock, but by reason of values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

2. That said assessments and valuations are excessive and confiscatory for the reason that said valuations of $327,590.00 in Pima county, if deemed the valuation placed upon the shares of common stock of plaintiff, is a valuation of approximately $23.75 per share, and said valuation of $29,385.00 in Graham county, if deemed a valuation placed upon the shares of common stock of plaintiff is a valuation of approximately $24.00 per share, when the book value of said shares of stock determined by the value of the assets of the plaintiff, as shown by plaintiff's books is approximately $13.50 per share, and the actual value of said shares of common stock as determined by actual sales made during the assessment period for the year 1935 is approximately $11.00 per share.

3. That the said assessments and valuations of $327,590.00 of Pima county, and of $29,385.00 in Graham county, if construed as assessments upon plaintiff's shares of common stock, are discriminatory against the holders of plaintiff's shares of

common stock and in favor of the holders of common stock in other banks in the state of Arizona, for the reason that the holders of the common stock in other banks (said banks as far as known to the plaintiff having issued no shares of preferred stock owned or held by the Reconstruction Finance Corporation), have been assessed and valued by the direction of the State [196] Tax Commission for tax purposes for the year 1935 at 75% of the capital stock, surplus and undivided profits of said banks, and that the holders of common stock of the plaintiff have been assessed for tax purposes in said two counties for the year 1935 at approximately twice the capital stock, surplus and undivided profits of the plaintiff.

4. That if said assessments and valuations of $327,590.00 in Pima county, and $29,385.00 in Graham county, are construed as assessments and valuations upon portions of plaintiff's common stock said assessments and valuations discriminate against the holders of the common stock of the plaintiff and in favor of the owners and holders of other classes of property in the state of Arizona, in that said shares of common stock of the plaintiff have been valued and assessed at approximately twice the actual value thereof, when other classes of property in the state of Arizona has not been assessed in excess of the cash value thereof.

5. That if said assessments and valuations are construed as assessments and valuations of the shares of common stock of plaintiff, said assessments and valuations discriminate against the own-

ers and holders of plaintiff's shares of common stock and in favor of the owners and holders of other moneyed capital in the state of Arizona, in violation of Section 548, Title 12 of United States Code Annotated, in that said shares of stock have been assessed at approximately twice their actual value, while other moneyed capital, particularly shares of capital stock of state banks, in the hands of individual citizens of the state of Arizona coming into competition with the business of national banks, has been assessed at not to exceed 75% of its actual cash value.

XIX.

That the County Assessor of Mohave County assessed the [197] shares of stock of the plaintiff as follows: He added together its common capital stock of $260,000.00, its surplus of $260,000.00, its undivided profits of $90,026.52, and its reserves of $89,000.00, making a total valuation of its shares of common stock of $699,026.52, and taking 1.37% thereof as the proper percentage for Mohave County, thus arriving at a calculation of $9,576.66, which said county assessor placed on the tax roll as the valuation of plaintiff's shares of stock for tax purposes for the year 1935 in his county; that said valuations so made by the county assessor of Mohave County resulted in a valuation of plaintiff's shares of common stock in that county at 100% of its book value when the shares of stock of all other banks in the state were equalized with the valuations of other kind and classes of prop-

erty at 75% of their book value, and further resulted in a valuation of said shares of stock at $13.34 per share when the market value thereof was not to exceed $11.00 per share.

XX.

That within the time provided by law plaintiff filed a written protest against the foregoing valuations of its shares of stock herein complained of with the County Board of Equalization in each of the counties of Maricopa, Pima, Graham and Mohave, being all of the counties in which the assessments and valuations of its shares of stock are complained of herein, and that within the time provided by law plaintiff appeared before the County Board of Equalization in each of said counties and urged the correction and reduction of said assessments in all respects herein complained of. That each of said County Boards of Equalization heard the plaintiff and refused and denied any relief to the plaintiff.

XXI.

That none of the aforesaid County Boards of Equalization [198] made any changes in the valuations made as aforesaid by the respective county assessors upon the shares of stock of the plaintiff, and the Clerk of each of said boards of supervisors, immediately after the July adjournment of said Boards of Equalization, transmitted to the State Board of Equalization the respective valuations made as aforesaid by the respective county assessors, which valuations were as follows, to-wit:

County	Valuation on Tax Roll
Maricopa	$793,593.08
Pima	327,590.00
Graham	29,385.00
Mohave	9,576.66

XXII.

That on or about the 7th day of August, 1935, the plaintiff filed a written protest with the defendants, Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization of the State of Arizona, protesting against the valuations of its shares of stock in Maricopa County, Pima County, Graham County and Mohave County, protesting against said valuations in all respects herein complained of, and on said 7th day of August, 1935, the plaintiff appeared before said Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization, and urged the correction and reduction of said valuations in all respects herein complained of. That said defendants, sitting as a Board of Equalization heard the plaintiff and denied plaintiff's protests and referred said protests to the State Tax Commission for further proof pending the outcome of certain suits pending in the Superior Courts of the State of Arizona.

XXIII.

That within the time provided by law the said State Board of Equalization fixed the rate of taxation to be levied for state purposes transmitted to

the Board of Supervisors of [199] each of the respective counties that are parties defendant to this suit, a statement of the changes which it had made in the assessment, (no change whatever having been made in the assessment of plaintiff's shares of stock) and the rate of taxes which was to be levied and collected within said county for state purposes; That each of said Board of Supervisors received said statement and ordered placed on the tax roll the respective valuations made by the respective county assessors as hereinabove alleged.

XXIV.

That after the completion of the valuation of plaintiff's shares of stock and the placing thereof on the tax rolls as aforesaid in the respective counties, the Board of Supervisors and the governing bodies of the cities and towns in each of said counties, (except the city of Phoenix, in Maricopa County), finally determined the estimates provided for by Section 3098 Revised Code of Arizona for 1928, and the school superintendents in said counties furnished to said Boards of Supervisors the estimates provided for by Section 1090, Revised Code of Arizona for 1928, and said Boards of Supervisors assessed taxes for the several amounts estimated as well as the state tax, at the rate fixed as aforesaid, upon the taxable property of the county and computed and carried out the real and personal taxes and total taxes of each person on said tax rolls, and computed at the proper tax

rates determined by the Board of Supervisors or the State Board of Equalization upon the aforesaid valuations, and entered upon the said tax rolls as taxes upon the shares of stock of the shareholders of the plaintiff, and as payable by the plaintiff, the following amounts, to-wit:

Maricopa	$49,810.86
Pima	20,362.98
Graham	1,894.88
Mohave	399.08

[200]

XXV.

That upon completion of the tax rolls for the year 1935, said tax rolls containing thereon the respective items of taxes set forth in Paragraph XXIV above, the Chairman of the Board of Supervisors of each of said counties, as prescribed by statute, annexed thereto under his hand, a warrant, commanding the County Treasurer and Ex-Officio Tax Collector to collect from the several persons named in said tax roll, including plaintiff, one-half of the taxes set opposite their respective names, including the illegal and void taxes, taxed, assessed and levied as aforesaid, on or before the first Monday in November, 1935, and the other one-half of said taxes on or before the first Monday in May, 1936. That said tax rolls, together with said warrants, were delivered to the respective county treasurers of said counties parties defendant hereto, in the manner and within the time provided by law.

XXVI.

That upon receipt of said assessment and tax rolls each of said county treasurers being parties defendant hereto, gave official notice specifying that one-half of said taxes, including the taxes sought to be enjoined in this suit, would be due and payable on the first Monday in September, 1935, and would become delinquent on the first Monday in November, 1935, at 5:00 o'clock p.m., and that the remaining one-half of said taxes would be due and payable on the first Monday in March, 1936, and would become delinquent on the first Monday in May, 1936, at 5:00 o'clock p.m., and that unless said taxes were paid prior to becoming delinquent, interest would accrue thereon from the time of such delinquency at the rate of ten per cent per annum until paid, or until said property or such part thereof as was necessary had been sold, and thereafter interest would accrue thereon at the rate provided in the tax certificates [201] issued covering the sale of said property, but not to exceed fifteen per cent per annum.

XXVII.

That before the first Monday in November, 1935, and before the filing of the bill of complaint, and during the regular office hours of the respective county treasurers who are parties defendant hereto, plaintiff tendered and offered to pay to each of said county treasurers the amount of taxes which plaintiff believes to be justly due and owing by the owners and holders of its shares of common

stock to said county treasurers for state, county and local taxes for the year 1935. The amounts which the plaintiff so tendered and offered to pay to each of said county treasurers are as follows:

Maricopa County	$17,938.09
Pima County	8,637.30
Graham County	808.58
Mohave County	298.78

That the amounts so above tendered as the amounts justly due and owing to the said county treasurers for taxes for the year 1935, were determined by computing the proper proportion of 75% of the book value as shown by plaintiff's statement, excluding, however, from said computation plaintiff's shares of preferred stock held by the Reconstruction Finance Corporation and the assets represented thereby. That is to say, plaintiff added together its common capital stock of $260,000.00, its surplus of $260,000.00, its undivided profits of $90,026.52, and its reserves of $89,000.00, making the sum of $699,026.52, and then took the proper percentage thereof apportioned to each of said counties, to-wit: Maricopa County 54.47 per cent, Pima County 26.53 per cent, Graham County, 2.34 per cent, Mohave County, 1.37 per cent, which gave the following figures: [202]

Maricopa County	$381,458.77
Pima County	185,451.73
Graham County	16,357.22
Mohave County	9,576.66

and then took 75% of each of said amounts, thus arriving at the actual cash value in each of said counties for plaintiff's shares of stock as follows:

Maricopa County	$286,094.08
Pima County	139,088.80
Graham County	12,267.91
Mohave County	7,182.50

and computed the tax at the respective rates as fixed in said counties by the proper authorities therein, thus arriving at the taxes in each of said counties at the amounts so tendered.

That the amount so tendered by plaintiff is the amount of taxes which would have been assessed against the shares of common capital stock in the several counties that are parties defendant hereto by the action of the assessing officials and State Board of Equalization if said taxing officials and said State Board of Equalization had applied the same basis of valuation to plaintiff's shares of common capital stock as they applied to the shares of other banks, state and national, doing business in the state of Arizona, and is likewise the amount that the taxing officials and State Board of Equalization would have assessed plaintiff's shares of common capital stock if they had not attempted to impose additional taxes upon plaintiff by reason of the fact that preferred shares of stock of the plaintiff were owned and held by the Reconstruction Finance Corporation.

XXVIII.

That each of the said county treasurers aforesaid refused and continues to refuse to accept payment of the amount tendered upon the ground that said amount tendered was not the full amount of taxes assessed to and payable by plaintiff for the purposes for which it was tendered. That each of said county [203] treasurers, on refusing said tender, declared that it was his duty to collect from plaintiff the amount of taxes assessed against plaintiff's shares of stock that appeared on his books, and that he would proceed to collect the same in accordance with the laws of the State of Arizona.

That plaintiff has been and is willing and able, and has stood ready and will continue to stand ready to pay to each of the above mentioned county treasurers the amounts tendered as aforesaid, and that if it shall be held in this suit that the sums which plaintiff has tendered and offered to pay to the said county treasurers, or any of them, for the purposes for which said tenders were made, are less than the amounts found justly and equitably due and owing by the plaintiff to the said county treasurers, or any of them, for 1935 taxes, plaintiff stands ready, able and willing to pay, and will pay to the said county treasurers, and each of them, such other and further sum or sums as may be found to be just and equitable.

XXIX.

That it was and is provided by Section 3101, Revised Code of Arizona for 1928, as amended by Chapter 106, Session Laws of Arizona for 1931, that all taxes levied upon real or personal property shall be a lien upon the property assessed, which lien shall attach on the first Monday in January in each year and shall not be satisfied or removed until such taxes, penalties, charges and interest are paid or the property is finally vested in a purchaser under a sale for taxes, and that said lien shall be prior and superior to all other liens and encumbrances upon said property, except liens and encumbrances held by the state of Arizona. That it is further provided by said section, amended as aforesaid, that personal property shall be liable for taxes levied on real [204] property and real property shall be liable for taxes levied on personal property, and that a judgment against real property for non-payment of taxes thereon or assessed to the personal property of the same person shall not be prevented by showing that the owner thereof was possessed of personal property out of which the taxes could have been made.

That it was and is provided by Section 3070, Revised Code of Arizona, 1928, that the taxes due upon shares of banking corporations or associations shall be paid by such corporation or association and shall be a lien against and assessed to such shares of stock and no such corporation or association shall pay any dividends to any shareholder who is

in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3112 of the Revised Code of Arizona, 1928, that the county treasurer may at any time after receiving the tax roll, collect by distraint and sale, if not otherwise collected, the taxes due on personal property; that the sale must be at public auction after one week's notice of the time and place thereof, and must be of a sufficient amount of the property issued to pay the taxes, fees and costs, and that on payment of the purchase price and the delivery of the property with a bill of sale thereof, title thereto vest in the purchaser.

That it was and is provided by Section 15 of Title 103 of Arizona Session Laws of 1931, that taxes upon real estate if unpaid, shall become delinquent, first half, on the first Monday in November, and second half, on the first Monday in May, of each year, and that it was and is provided by Section 17 of said Chapter 103, that all taxes shall bear interest [205] from the time of delinquency at the rate of ten per cent per annum until paid, and a fraction of a month shall be counted as a whole month, and that it was and is further provided by Section 18 of said Chapter 103, that all real property upon which the taxes, including personal property taxes secured thereby are unpaid and delinquent, shall be subject to sale as in said chapter provided.

XXX.

That by virtue of the foregoing provisions of the statutes of the state of Arizona, the taxes levied and assessed upon plaintiff's shares of stock for the year 1935 in the manner aforesaid, whether legal or illegal, became payable on or before the fourth day of November, 1935.

Plaintiff in the year 1935, and at all times since, has owned and held real estate in all of the counties which are parties defendant to this suit, except Yavapai County.

That many of the owners and holders of plaintiff's shares of stock owned and held during the year 1935, and now own and hold real estate in one or more of said counties, and that the aforesaid illegal taxes are an apparent lien or cloud upon the real estate owned by the plaintiff in the respective counties and upon the real estate of the shareholders of the plaintiff in the respective counties as well as upon said shares of stock and that said shares of stock on said 4th day of November, 1935, became subject to seizure and sale for said taxes in the manner provided by the Statutes of Arizona above set forth.

That it was impossible for plaintiff to determine from the assessments made in Pima and Graham counties whether the taxes imposed in said counties were imposed solely on plaintiff's shares of common stock or upon both common and preferred shares and if plaintiff assumed that said taxes were imposed [206] upon both classes of stock, it was

impossible to apportion the same between the common and preferred shares. If plaintiff paid said taxes as demanded by the treasurers of said two counties it would not know to which class of its shareholders to charge said payment, or if it charged the same to both classes, it would not know what amount to charge to each, and if it attempted to secure reimbursement by withholding payment of dividends or refusing transfers of shares, it would subject itself to a separate suit for damages by each of its shareholders.

That plaintiff filed its original Bill of Complaint in this court before the fourth day of November, 1935, and prayed for the issuance of a temporary injunction restraining the defendants from proceeding to collect the taxes complained of; that after said complaint was filed, a stipulation was entered into by and between the plaintiff and the several defendants by which it was stipulated and agreed that the several defendant county treasurers would accept the amount of taxes theretofore tendered by the plaintiff to each of them without prejudice to their right to collect the remainder at any future time and that the plaintiff might withdraw its application for temporary injunction and that the said defendants would refrain from proceeding to enforce collection of the taxes alleged by plaintiff to be illegal during the pendency of this suit, but that said defendants or any of them should have the right at any future time to proceed to collect said taxes in the manner they thought proper and that

if they did so proceed, or threaten to proceed, plaintiff should have the right to renew its application for temporary injunction. That said stipulation expressly provided that the rights of any party to prosecute or defend this suit should not be prejudiced or affected in any way by said stipulation, or [207] anything done in pursuance thereof except in so far as said stipulation expressly provided therefor. That said stipulation was approved by an Order regularly made and entered by the court.

That on or about the 10th day of April, 1939, the County Treasurer of Pima County gave notice to the plaintiff that he would proceed to collect all of the taxes assessed in his county against plaintiff's shares of stock for the year 1935, including those alleged to be illegal by the plaintiff, as well as those admitted to be legal.

That by reason of the aforesaid action of the County Treasurer of Pima county, all of the defendants renewed their threat to enforce collection of the taxes sought to be enjoined, in this case. That those county officers made parties defendant hereto who had come into office since filing the original Bill of Complaint continued the threat of their predecessors to enforce collection of said taxes, and that by reason of the aforesaid threats, plaintiff thereupon renewed its application for temporary injunction.

XXXI.

That it was and is provided by Section 3065, Revised Code of Arizona for 1928, that a taxpayer dissatisfied with the amount of his assessment as re-

viewed by the State Board of Equalization may appeal from said assessment to the Superior Court of the county where the taxes are payable; that the remedy of such appeal was and is not available to the plaintiff to relieve it from the burden of the illegal taxes herein complained of, for the following reasons:

1. That said appeal is by said Section 3065 limited to a determination of the full cash value of the property assessed, and does not give the party appealing the right to question the legality of the tax imposed or any part thereof. [208]

2. That the judgment of the court on such appeal is by said Section 3065, limited to finding the full cash value of the property assessed and said judgment cannot provide for the elimination from the assessment of property illegally or wrongfully assessed.

3. That such appeal would have to be taken separately from the valuation made by each of the four counties to the Superior court of that county. The question of apportionment among said four counties would have to be determined separately in each of said counties without an opportunity for any county, except the one in whose Superior Court the particular suit was pending, to be heard on said question, with the result that there would probably be four different decisions and four different appeals to the Supreme Court, all of which would have to be determined without opportunity for the

several counties to directly contest their respective contentions.

4. That no such appeal can be taken unless the appellant first pays to the said county treasurer the amount of taxes levied against this property; and unless so paid the appeal must be dismissed by the court, and there is no provision for the county treasurer withholding the disbursements of the money paid by appellant until the determination of said appeal and the judgment on the appeal, if in favor of the appellant, can only be a judgment against the county for the amount of the excess taxes paid.

5. That said appeal lies only to the Superior Court of the county in which the tax is assessed and is not available in a Federal Court; that such appeal is a judicial and not an administrative remedy and plaintiff, under the constitution and laws of the United States, is not obliged to resort thereto but may bring its action in a Federal Court of Equity. [209]

XXXII.

That it was and is provided by Section 55 of Chapter 103 of Arizona Session Laws for 1931, that no person upon whom a tax has been imposed under any law relating to taxation shall be permitted to test the validity thereof either as plaintiff or defendant, unless such taxes shall first have been paid to the proper county treasurer together with all penalties thereon and that no injunction

shall ever issue in any county or proceeding in any court against the state or against any county, municipality or officer thereof, to prevent or enjoin the collection of any tax levied.

That it was and is provided by the aforesaid Section 55, that after payment of taxes an action may be maintained to recover any tax illegally collected, and if the tax due shall be determined to be less than the amount paid, the excess shall be refunded in the manner "hereinbefore provided", but that said Chapter 103, Arizona Session Laws of 1931, wholly fails to provide in what manner said refund may be made.

That it was and is provided by Section 876 of the revised Code of Arizona for 1928, that the treasurers of the several counties shall transmit to the state treasurer all money in the county treasury belonging to the state, or collected for it within ten days after receipt of a letter from the State Treasurer to that effect.

That it was and is provided by Section 3107, Revised Code of Arizona for 1928, that the county treasurer shall pay to the treasurer of each City or Town in his county, on the first day of each month in each year, all money in his hands collected for the previous month on taxes for said city or town.

That it was and is provided by Section 1029, Revised Code of Arizona for 1928, that the county treasurer shall [210] receive and hold as a special fund all school moneys, and keep a separate account thereof, and when it is apportioned among the

school districts, shall keep a separate account for each district, notify the County School Superintendent on the first of each calendar month of the amount of the county school fund and special district funds on hand in the treasury to the credit of such fund, and pay over on the warrants of the county school superintendent duly endorsed by the person entitled to receive the same, any or all such money.

That there is no provision in the laws of the state of Arizona requiring or permitting county treasurers to withhold from apportionment or distribution to the state or city or towns, or school districts, or other legal subdivisions therein, any tax money paid to them under protest or as a condition precedent to the appeal provided by Section 3065, Revised Code of Arizona for 1928, from the valuation fixed by the State Board of Equalization.

XXXIII.

That at the time of the filing of the original complaint in this cause there was no controlling decision by the Courts of Arizona determining the nature of the judgment that should be rendered in a case to recover taxes paid under protest, under the provisions of Section 55 of Chapter 103, Arizona Session Laws of 1931. Plaintiff alleged in the original complaint that it might be held by the courts of Arizona that separate actions would be required to be brought against the county and the state and school districts, and the municipalities to which the taxes

sought to be recovered had been distributed, and that if it were so held, it would be impracticable for plaintiff to pay the taxes and sue to recover the amount paid from the various counties, school districts and municipalities, on account of the multiplicity of suits that would be required [211] to be brought in such event. That since the filing of the original complaint in the cause, on or about the 10th day of October, 1935, the Supreme Court of Arizona construed Section 55 of Chapter 103 of the Session Laws of 1931 so as to give a taxpayer who had paid taxes under protest and sued to recover the same, an ordinary judgment against the county into whose treasury the money was paid by the taxpayer. Said court construed said Section 55 as not creating a trust fund of the tax moneys paid under protest, and as not requiring the county treasurer to withhold distribution of said tax moneys so paid under protest, and as not requiring said county treasurer to refund the particular moneys paid to him, and further interpreted said Section 55 with other sections construed together therewith as giving to the taxpayer who had paid his taxes under protest merely the right to an ordinary judgment against the county on an equality with other general obligations of the county. As thus construed, said Section 55 gives to the taxpayer paying taxes under protest, if the taxes are shown to have been illegal, a judgment against the county, which it is the duty of the Board of Supervisors of the county to pay out of funds in the county treasury

not otherwise appropriated, or, if there are no such funds, it becomes the duty of the Board of Supervisors to budget the judgment as a county expense and levy a tax to pay it.

That if plaintiff had paid the taxes sought to be enjoined in this suit when the original complaint was filed and had brought immediate suits to recover the same and had promptly obtained judgment against the respective counties parties hereto; it would in all probability have realized on said judgments against the counties of Pima, Graham and Mohave within the period of one year from the date that the judgment became final, but that the financial affairs of the county of [212] Maricopa at the time when the original complaint in this suit was filed and for sometime thereafter were such that any judgment obtained by plaintiff against Maricopa County would have remained unpaid for four years from the date of said judgment; that the financial condition of Maricopa County began to improve immediately after the year 1935, and from and after approximately three years from the date of the filing of the original complaint herein, any judgment obtained against Maricopa County would have been paid within a year after it became final.

XXIV.

That the assessments made or attempted to be made on plaintiff's shares of stock in Pima and Graham Counties are based upon a valuation of the tangible properties owned and held by plaintiff in

said counties. That the taxing officials of said counties took the position that said method of valuation was justified by the concluding sentence of Section 3071 Revised Code of Arizona for 1928. At the time of the trial the taxing official of said Pima and Graham Counties took the position that any excess valuation imposed upon plaintiff's shares of stock in all of the counties by reason of the different methods of valuation prescribed by the first portion of said Section 3071, Revised Code of Arizona for 1928, which was followed by the counties other than Pima and Graham and that prescribed by the concluding sentence of said Section 3071, which was purported to be followed by said Pima and Graham Counties must be borne by plaintiff and its stockholders as additional valuation. This position was first taken by Pima and Graham Counties upon their filing of the joint and several answers of the defendants to the second amended and supplemental bill of complaint which was filed in July 1940, and that prior to said date plaintiff believed and was justified [213] in believing that said Pima and Graham Counties were attempting to cast the excess valuation produced by the different methods of assessment in the different counties upon the other counties in any proceeding involving said taxes and such issue, if it had been raised, could have determined only in an equitable proceeding to which the several counties were parties.

That subsequent to the filing of the original complaint in this cause, at the time fixed by law for

assessing taxes for the year 1937, the taxing officials of the several counties, parties hereto, and of other counties in the State of Arizona in which plaintiff has branches, assessed taxes for the year 1937 upon plaintiff's shares of stock; that all of such assessments were reviewed at the proper time by the State Board of Equalization; that said Board eliminated all values represented by plaintiff's preferred stock from such assessments for said 1937 taxes, except that in the case of Pima County the assessment was again made for an amount equal to the full value of the tangible, real and personal property owned by the plaintiff and situated in that county, said Pima county thus again assessing values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and said State Board of Equalization thus again declined to eliminate said value from said assessment and said Pima county imposed a tax of approximately $11,400.00 on values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation. Plaintiff did not appeal from the action of said Board of Equalization under Section 3065, Revised Code of Arizona for 1928, but paid the full tax assessed, under protest, and sued to reciver said sum of $11,400.00 from Pima county, or, in the alternative, if Pima county's method of assessment should be found correct by the court, to recover said sum pro rata from the other counties [214] to which it was paid.

The trial court held that the plaintiff's exclusive remedy provided by the State Law was by appeal to the Superior Court of the county, under Section 3065, Revised Code of 1928, and that plaintiff had no remedy to pay the tax under protest and recover the same under Section 55, Chapter 103, Session Laws of 1931. On or about June 30, 1941, and after this court had rendered its decision in favor of the plaintiff herein, the Supreme Court of Arizona reversed the said decision of the trial court holding that the remedy under Section 55, Chapter 103, Session Laws of 1931, was available to plaintiff. Prior to said decision of June 30, 1941, there was no decision by the Supreme Court of Arizona authoritatively passing upon the question. Said Supreme Court had once said by way of dictum that the remedy provided by Section 55, Chapter 103, Session Laws of 1931, was available only when the tax was assessed under an unconstitutional law, and again it had said by way of dictum that the remedy provided by Section 55, Chapter 103 Session Laws of 1931, was available whenever no other remedy was provided by law. There being conflicting declaraitons by it, said Supreme Court did not consider itself bound by their expression and deemed the question wholly open for future decision, until it determined the question by its decision of June 30, 1941.

XXXV.

That at no time prior to the decision of this court in plaintiff's favor was there available to plaintiff

a plain, speedy and adequate remedy by payment of the illegal taxes, and suing to recover the same, and plaintiff is entitled to maintain this suit in equity for the purpose of preventing a multiciplicity of suits, and to obtain an adjudication of the proper apportionment of taxes between the several counties parties hereto.

XXXVI.

That by reason of the provisions in the statute of the state of Arizona, prohibiting the issuance of an injunction to prevent the collection of illegal taxes, plaintiff at all times prior to the decision of this court in plaintiff's favor, was without a plain, speedy and adequate remedy in the courts of the State of Arizona, and had no remedy except in the United States District Court, for the District of Arizona. [215]

XXXVII.

That the plaintiff has exhausted all administrative remedies available to it under the statutes and laws of the state of Arizona.

XXXVIII.

That plaintiff, unless granted the relief prayed for in its complaint, will suffer great and irreparable damage and injury, and will be subjected to a multiplicity of suits, and has no plain or adequate remedy at law.

XXXIX.

That at the time of the filing of the original complaint in this cause, plaintiff believed in good faith that the constitution and laws of the United States secured to plaintiff and its shareholders immunity from taxation by or under the authority of the state on its shares of preferred stock hereinbefore described, and on the assets represented by said preferred stock, said assets being acquired by and from the money paid to it by the Reconstruction Finance Corporation of the United States of America, as the purchase price of said preferred stock, and that in said original complaint plaintiff, on behalf of itself and as the agent and trustee of its shareholders, expressly claimed such immunity.

That plaintiff in said original complaint further claimed immunity from such taxation under the exemption granted to said property by Section 2 of Article IX of the Arizona Constitution, and likewise claimed that the taxes sought to be enjoined by it in said original complaint were illegal and void, because of discrimination against it made by the assessing officers in violation of the Constitution of Arizona, and the Act of Congress permitting and limiting the taxation of shares of stock of national banks.

That after the filing of the original Bill of Complaint [216] in this cause, to-wit, on or about the 3rd day of February, 1936, the Supreme Court of the United States determined and decided that the immunity from taxation under the Constitution and

laws of the United States of the shares of preferred stock of National banks held by the Reconstruction Finance Corporation, had been waived by the Congress of the United States giving its consent to the taxation of shares of stock of national banks.

That while said original complaint remained pending on plaintiff's claim of the exemption of the taxes sought to be enjoined under Section 2 of Article IX of the State Constitution, and plaintiff's claim of discriminatory assessment violating the Constitution of the State of Arizona, and plaintiff's claim of the violation of the Acts of Congress permitting and limiting the assessment of shares of stock of national banks; on or about the 20th day of March, 1936, the Congress of the United States passed an act which was signed by the President on the same day, expressly declaring that preferred stock of national banks held by the Reconstruction Finance Corporation of the United States, should be exempt from all taxes, whether theretofore or thereafter assessed or levied. That the major portion of the taxes, the collection of which the plaintiff seeks to enjoin in this case, falls clearly within the terms of said last mentioned Act of Congress as taxes theretofore assessed and levied, and which have not been paid. That the Reconstruction Finance Corporation, the holder of the shares of preferred stock of the plaintiff against which the major portion of the taxes herein sought to be enjoined has been levied, immediately gave notice to

the plaintiff to refuse payment of all taxes heretofore or hereafter assessed or levied against the preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation. That the whole [217] of the $1,240,000.00 par value of the shares of stock attempted to be assessed for taxes as hereinbefore alleged, is and at all times hereinafter mentioned has been owned by said Reconstruction Finance Corporation. That under the provisions of Sections 3069 and 3070, of the Revised Code of Arizona, and also under the decisions of the Supreme Court of the United States, made February 3, 1936, the major portion of the illegal taxes, the collection of which is sought to be enjoined in this case, is levied and assessed upon the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation, and is payable only by the plaintiff as the statutory agent for such preferred shareholder, and if plaintiff pays such taxes, the same cannot be deducted from its general assets, nor can the same be deducted from the dividends to its common shareholders, but under the said Sections 3069 and 3070 of the Revised Code of 1928, the same are required to be deducted from the dividends on the preferred stock of the Reconstruction Finance Corporation.

That under the provisions of the Act of Congress, which became a law on March 20, 1936, the Reconstruction Finance Corporation is precluded from permitting the plaintiff to deduct said taxes from the dividends payable on the preferred stock held by it.

That if plaintiff is required to pay said taxes to the respective counties which are parties defendant hereto as the agent of the Reconstruction Finance Corporation, as its preferred shareholder, it will be unable to reimburse itself for such payment from the Reconstruction Finance Corporation, and will be compelled to pay said taxes on its preferred shares of stock out of its own funds, to which the holders of its common shares are entitled. That plaintiff herein expressly claims the right, privilege and immunity under the constitution [218] and laws of the United States, of not being subjected to the payment of such taxes of its preferred shareholder, which it will be unable to collect from such shareholder.

CONCLUSIONS OF LAW

I.

That the Act of Congress of March 20th, 1936, exempting preferred stock of banks from state and local taxation while such stock is owned and held by Reconstruction Finance Corporation is constitutional. Those provisions of said Act which operate retroactively are of equal validity with those that operate prospectively.

II.

That the valuation imposed by Maricopa county upon plaintiff's shares of stock for the tax year 1935 was to the extent of $507,501.00 imposed upon plaintiff's shares of preferred stock owned and held

by Reconstruction Finance Corporation, and that the taxes levied by Maricopa County as payable by plaintiff for the tax year 1935 were to the extent of $31,872.77, levied upon plaintiff's shares of preferred stock which have at all times been owned and held by Reconstruction Finance Corporation.

III.

That the valuation of $327,590.00 which Pima County claims it placed upon plaintiff's shares of common stock for the tax year 1935 was not made in accordance with the concluding sentence of Section 3071, Revised Code of Arizona for 1928, nor any other statute of the State of Arizona, and was void and of no effect to the extent of $188,501.20, which was imposed upon property values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and of the taxes levied by Pima County for the tax year 1935, as payable by plaintiff, $11,725.68 was void and uncollectable as levied [219] upon values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation.

IV.

That the valuation of $29,385.00 which Graham County claims it placed upon plaintiff's shares of common stock for the tax year 1935 was not made in accordance with the concluding sentence of Section 3071 Revised Code of Arizona, 1928, nor any other statute of the State of Arizona, and was void and of no effect to the extent of $17,117.58, which

was imposed upon property values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and of the taxes levied by Graham county for the tax year 1935 as payable by plaintiff, $1,086.30 was void and uncollectable as levied upon values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation.

V.

That the valuation placed by Mohave County upon plaintiff's shares of stock for the tax year 1935 was invalid to the extent of $2,394.16, and, of the taxes levied for Mohave County for the tax year 1935 as payable by plaintiff, $100.30 was invalid, for the following reasons: (a) Said taxes were levied in violation of Section 548, Vol. 12 United States Code Annotated, prohibiting the taxation of shares of stock of national banks at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens coming into competition with the business of national banks, and (b) Said taxes were levied in violation of Section 1 of Article IX of the Arizona Constitution providing for uniformity in taxation of property of the same class.

VI.

That if defendants' contention that the valuations made by Maricopa, Pima and Graham counties were not in fact valua- [220] tions of plaintiff's preferred stock or property values represented by such preferred stock be accepted, it will necessarily

follow that such valuations are illegal and void for the following reasons: (a) Each of them resulted in a violation of Section 548, Vol. 12, United States Code Annotated, prohibiting the taxation of shares of stock of national banks at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens coming in competition with the business of national banks, and (b) Each of them resulted in a violation of Section 1 of Article IX of the Arizona Constitution requiring uniformity in the taxation of property of the same class.

VII.

That the four counties parties defendant to this suit were properly joined to prevent a multiplicity of suits. While the assessments in some of the counties present questions not presented by the assessments in other counties the important questions of law and fact are presented by each of said assessments and should properly be determined in a single suit. The questions to be determined do not involve separate taxes in the four different counties, but one tax imposed upon plaintiff's shares of stock under Section 3070, and apportioned among the several counties under Section 3071, Revised Code of Arizona, 1928.

VIII.

That the appeal proceeding provided for by Section 3065 Revised Code of Arizona for 1928, is a judicial, not an administrative remedy, and is not available in the federal courts and that plaintiff

VII.

under the federal law as it existed when this suit was begun, was not required to resort to such appeal proceeding.

IX.

That the tax payer is plaintiff in an appeal proceeding [221] under Section 3065, Revised Code of Arizona for 1928, and is not entitled to remove such appeal proceeding to the federal courts.

X.

That at all times prior to the decision of this court in plaintiff's favor, plaintiff had no plain and adequate remedy by paying the taxes sought to be enjoined and suing to recover them under Section 55, Chapter 103, Session Laws of 1931, for the reason that under the decisions of the Supreme Court of Arizona, it was undetermined and doubtful if such remedy was available and a decision of the Superior Court of Pinal County, Arizona, received in evidence in this case, held it was not available.

XI.

That plaintiff was legally entitled to set up the Act of Congress of March 20, 1936, by amended and supplemental complaint, in support of its original complaint though said Act was not passed until after the original complaint was filed.

XII.

That inasmuch as it appears from the record in this case all taxes admitted to be owing to the re-

spective defendants have been paid to the respective county treasurers under stipulations approved by this court, and it is admitted by the defendants that the amounts so paid under stipulation are the proper amounts in the event plaintiff's legal contentions are sustained and the court has found the issues in plaintiff's favor, plaintiff is entitled to an injunction enjoining the several county treasurers, parties defendant hereto, from collecting any further taxes from plaintiff, or its shareholders, for the year 1935, and to its costs.

DAVE W. LING
Judge

Dated: October 8, 1941. [222]

[Endorsed]: Received copy of within this 23rd day of June, 1941. Richard F. Harless, Leslie C. Hardy, Charles B. McAlister, Attorneys for Maricopa County et al. Joe Conway, Attorney General State of Arizona.

[Endorsed]: Pltf's Proposed Findings, etc. Filed Jun. 23, 1941. Edwards W. Scruggs, Clerk, United States Circuit Court for the District of Arizona. By Wm. H. Loveless, Chief Deputy Clerk.

[Endorsed]: Findings of Fact and Conclusions of Law. Filed Oct. 8, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Wm. H. Loveless, Deputy Clerk.

[223]

In the District Court of the United States
for the District of Arizona

No. E-333 Phx

THE VALLEY NATIONAL BANK OF PHOENIX,

Plaintiff,

vs.

MARICOPA COUNTY, et al,

Defendants.

JUDGMENT ENJOINING COLLECTION OF TAXES

This cause came on regularly for trial on the 29th day of November, 1940, before the Honorable Dave W. Ling, Judge of the District Court of the United States for the District of Arizona, a jury having been waived by all parties to said cause. Evidence having been received and the trial concluded on said date, the case was submitted to the court for its consideration by counsel for the respective parties.

The court, after due consideration having found the issues in favor of plaintiff and Findings of Fact and Conclusions of Law having been signed by the court and filed herein:

It is ordered, adjudged and decreed that the following taxes for the tax year of 1935, were legally levied against the holders of the shares of common stock of the plaintiff and were payable by the plain-

tiff as and for state, county, school district and other local taxes (except City of Phoenix taxes); and were collectible by the respective County Treasurers of said counties from the plaintiff as follows:

Maricopa County	$17,938.09
Pima County	8,637.30
Graham County	808.58
Mohave County	298.78

That all other and further taxes levied or assessed or attempted to be levied and assessed as state, county, school dist- [224]rict and other local taxes (except City of Phoenix taxes) in the above named counties for the year 1935, upon plaintiff's shares of stock or as payable by plaintiff were and are illegal and void.

That in pursuance of a stipulation entered into by the plaintiff with the respective County Treasurers, who are parties to this suit, approved by the order of this court in this cause, all of the above mentioned taxes found to be legal and valid have been paid by the plaintiff to the respective County Treasurers and that by such payment all state, county, school district and other local taxes collectible from plaintiff by the County Treasurers of the above named counties (except City of Phoenix taxes) have been fully paid; that the defendants hereto have no legal right, power or authority to levy or cause to be levied any further taxes against the plaintiff or its shareholders payable in the aforesaid counties as and for taxes for the year 1935.

It is further ordered, adjudged and decreed that the respective County Treasurers of the four counties herein named, their deputies, agents and servants be and they hereby are permanently restrained and enjoind from collecting any further moneys from the plaintiff or its shareholders as and for state, county, school district or other local taxes for the tax year 1935, (except City of Phoenix taxes) and that plaintiff have and recover from the defendants its costs herein incurred to be taxed by the Clerk of this court.

Done in open court this 8th day of October, 1941.

[225]

[Endorsed]: Received copy of within this 23rd day of June, 1941. Richard F. Harless, Leslie C. Hardy, Charles B. McAlister, Attorneys for Maricopa County. Joe Conway, Attorney General, State of Arizona.

[Endorsed]: Pltf's Proposed Judgment. Filed Jun. 23, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Wm. H. Loveless, Chief Deputy Clerk.

[Endorsed]: Judgment filed Oct. 8, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Wm. H. Loveless, Chief Deputy Clerk. [226]

[Title of District Court and Cause—E-350.]

MINUTE ENTRY OF WEDNESDAY, OCTOBER 8, 1941

It is ordered that the objections of Maricopa County, Arizona, et al, and of Pima County Arizona, et al, to Plaintiff's Proposed Findings of Fact and Conclusions of Law be, and they are hereby overruled.

It is further ordered that Plaintiff's Proposed Findings of Fact and Conclusions of Law and suggested amendments thereto be, and they are hereby adopted.

It is further ordered that the form of judgment for Plaintiff heretofore proposed, as now amended, be filed, entered and spread on the minutes as the judgment in this case, as follows:

(Title of Cause E-350)

JUDGMENT ENJOINING COLLECTION OF TAXES

This cause came on regularly for trial on the 29th day of November, 1940, before the Honorable Dave W. Ling, Judge of the District Court of the United States for the District of Arizona, a jury having been waived by all parties to said cause. Evidence having been received and the trial concluded on said date, the case was submitted to the court for its consideration by counsel for the respective parties.

The court, after due consideration having found

the issues in favor of plaintiff, and Findings of Fact and Conclusions of Law having been signed by the Court and filed herein:

It is ordered, adjudged and decreed that the following taxes for the tax year of 1936, were legally levied against the holders of the shares of common stock of the plaintiff and were payable by the plaintiff as and for state, county, school district and other local taxes (except City of Phoenix taxes) and were collectible by the respective County Treasurers of said counties from the plaintiff as follows: [227]

Maricopa County	$14,983.29
Pima County	4,900.84
Graham County	673.71
Yavapai County	677.32
Gila County	4,296.68

That all other and further taxes levied or assessed, or attempted to be levied and assessed as state, county, school district and other local taxes (excepting City of Phoenix taxes) in the above named counties for the year 1936, upon plaintiff's shares of stock or as payable by plaintiff were and are illegal and void.

That on or about the 7th day of December, 1936, the plaintiff entered into a stipulation with the respective County Treasurers who are parties to this suit, approved by the order of this court in this cause, by which it was provided that all of the above mentioned taxes found to be legal and valid would be paid by the plaintiff to the respective County

Treasurers without prejudice to the further prosecution or defense of this suit, as to the balance of the taxes sought to be enjoined by the plaintiff. That in pursuance of said stipulation the plaintiff has paid to the treasurers of Maricopa, Pima, Graham, Yavapai and Gila counties, respectively, the amount of the taxes hereinabove found to be legally assessed against plaintiff's shareholders and payable by the plaintiff in said counties.

That the defendants hereto have no legal right, power or authority to collect any further taxes for the year 1936, from the plaintiff.

That the defendants hereto have no legal right, power or authority to levy or cause to be levied any further taxes against the plaintiff or its shareholders, payable in the aforesaid counties as and for taxes for the year 1936.

It is further ordered, adjudged and decreed that the respective county treasurers of the five counties herein named, their deputies, agents and servants, be and they hereby are permanently restrained and enjoined from collecting any further moneys from the plaintiff or its shareholders, as and for said county, school district or other local taxes for the year 1936 (except City of Phoenix taxes), and that plaintiff have and recover from the defendants its costs herein incurred, to be taxed by the clerk of this court.

Done in open court this 8th day of October, 1941.

[228]

[Title of District Court and Cause—E-350.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause regularly having come on for trial upon plaintiff's amended and supplemental bill of complaint and the joint and several answers of defendants to amended and supplemental bill of complaint upon the 29th day of November, 1940, and the court having heard the evidence of the parties without a jury and the cause having been submitted for the consideration of the court by counsel for the respective parties, upon due consideration the court finds the following facts:

I.

That plaintiff is, and was at all times since the 11th day of February, 1935, a corporation, duly incorporated as a National Banking Association under the laws of the United States of America, and authorized to do a banking business in the State of Arizona, having its principal banking house at Phoenix, Maricopa County, Arizona, and branches in other cities and towns in the county of Maricopa, and in cities and towns in the counties of Pima, Graham, Mohave, Gila, Greenlee, Pinal and Yavapai.

That plaintiff brings this suit in its own behalf and in behalf and as the agent of the holders of its common stock.

That the defendants, Maricopa County, Pima County, [229] Graham County, Yavapai County and

Gila County, each are and at all times herein mentioned, were duly organized and existing counties of the State of Arizona, and political subdivisions of said state;

That Harry M. Moore is a citizen and resident of Maricopa County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county; that after the filing of said original complaint he was succeeded in said office by Ed. Oglesby, a citizen and resident of said Maricopa County, and that said Ed. Oglesby was duly substituted in place of said Harry M. Moore as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of Maricopa County, and as such officer was a party defendant at the time of the trial and that thereafter on or about the 4th day of January, 1941, W. H. Linville succeeded the said Ed. Oglesby as such County Treasurer and Ex Officio Tax Collector, and was regularly substituted as a party defendant hereto as such County Treasurer and Ex Officio Tax Collector;

That the defendant, J. D. Brush, is a citizen and resident of Maricopa County, Arizona, and is the duly elected, qualified and acting County Assessor of said County, and is sued herein as such officer;

That the defendants John A. Foote and Geo. Frye, are citizens and residents of Maricopa County, Arizona, and are now and at all times herein

mentioned were duly elected, qualified and acting members of the Board of Supervisors of said Maricopa County and the County Board of Equalization of said county;

That at the time of the filing of the original complaint herein C. W. Peterson, a citizen and resident of Maricopa [230] County, Arizona, was the third member of said County Board of Supervisors and said County Board of Equalization, and that said C. W. Peterson has been succeeded in said offices by Charles H. Fields, a citizen and resident of Maricopa County, who has been regularly substituted for said C. W. Peterson as a party defendant to this suit as such officer;

That Daniel E. Garvey is a citizen and resident of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, was the duly elected, qualified and acting county treasurer and Ex Officio Tax Collector of said county; that since the filing of said original complaint, Wallace Bransford, a citizen and resident of Pima County, Arizona, has succeeded said Daniel E. Garvey as County Treasurer and Ex Officio Tax Collector of said county, and is sued herein as such officer, having been legally substituted as a party defendant in said cause in place of the said Daniel E. Garvey;

That the defendant Charles M. Taylor, is a citizen and resident of Pima County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer.

That Warren A. Grossetta, R. H. Martin and J. B. Mead are citizens and residents of Pima County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of the Board of Supervisors of said Pima County and the Board of Equalization of said county;

That since the filing of the original complaint in this cause, Thomas Collins, a citizen and resident of Pima County, Arizona, has been duly elected a member of the Board of Supervisors of Pima County, Arizona, to succeed Warren A. Grossetta, and that said Thomas Collins, R. H. Martin and J. B. Mead do now constitute the Board of Supervisors of [231] Pima County, Arizona, and are sued herein as such officers, the said Thomas Collins having been substituted as a party defendant in place of Warren A. Grossetta;

That Charles M. Geitz was a citizen and resident of Graham County, Arizona, and was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county at the time of the filing of the original complaint in this cause; that since the filing of the original complaint in this cause Earl M. Lines has succeeded the said Charles M. Geitz as the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said county and is sued herein as such officer, having been substituted as a party defendant in place of said Charles M. Geitz;

That the defendant, Alvin Goodman, is a citizen and resident of Graham County, Arizona, and is the duly elected, qualified and acting County Assessor of said county, and is sued herein as such officer;

That J. W. Greenhalgh, Glen Hoopes and Virgil McEuen, are citizens and residents of Graham County, Arizona, and at the time of the filing of the original complaint in this cause, were the duly elected, qualified and acting members of and constituted the Board of Supervisors of said Graham County, and the County Board of Equalization of said county;

That after the filing of the original complaint in this cause, Ernest D. Householder and M. E. Dubois, citizens and residents of Graham County, Arizona, succeeded J. W. Greenhalgh and Virgil McEuen as members of the Board of Supervisors of said Graham County, and the said Glen Hoopes, Ernest D. Householder and M. E. Dubois thereafter constituted the Board of Supervisors of said Graham County and the Board of Equalization of said county, and were substituted as parties defendant in the place of J. W. Greenhalgh and Virgil McEuen; and that [232] thereafter M. M. Larson succeeded Ernest D. Householder as a member of said Board of Supervisors and said County Board of Equalization and thereupon said M. M. Larson was regularly substituted for said Ernest D. Householder as a party defendant to this suit as such officer;

That David H. Biles was a citizen and resident of Yavapai County, Arizona, and the duly elected,

qualified and acting County Treasurer and Ex Officio Tax Collector of said County at the time of the filing of the original complaint in said cause; that said David H. Biles was succeeded as such County Treasurer and Ex Officio Tax Collector by Pearl Bethea, a citizen and resident of Yavapai County, Arizona, and that the said Pearl Bethea as such County Treasurer and Ex Officio Tax Collector was substituted as a party defendant to this case and thereafter Harry Marshall succeeded Pearl Bethea as County Treasurer and Ex Officio Tax Collector of said Yavapai County, and was regularly substituted for Pearl Bethea as a party defendant to this case as such officer;

That C. H. Riebeling was a citizen and resident of Yavapai County, Arizona, at the time of the filing of the original complaint in this cause and was the duly elected, qualified and acting County Assessor of said county; that since the filing of the original complaint in this cause, David H. Biles, a citizen and resident of Yavapai County, Arizona, has succeeded C. H. Riebeling as County Assessor of Yavapai County, Arizona, and is sued herein as such officer, having been substituted as a party defendant in place of the said C. H. Riebeling;

That at the time of the filing of the original complaint in this cause, W. M. Byers, and C. C. Jackson were citizens and residents of Yavapai County, Arizona, and were duly elected, qualified and acting members of and constituted the Board of Supervisors of Yavapai County, Arizona, and were made

[233] parties defendant hereto as such officers; that at the filing of the original complaint in this cause, T. B. Jones was the third member of said Board of Supervisors and was made a party defendant hereto as such officer; that thereafter, said T. B. Jones was succeeded as a member of the said Board of Supervisors by R. W. Wingfield, a citizen and resident of Yavapai County, Arizona, who was regularly substituted for said T. B. Jones as a party defendant hereto, and that thereafter, said R. W. Wingfield was succeeded as a member of said Board of Supervisors by Ralph G. Reid, a citizen and resident of Yavapai County; that said Ralph G. Reid has been substituted for R. W. Wingfield as a party defendant hereto, and that said W. M. Byers, C. C. Jackson and Ralph G. Reid now constitute the duly elected, qualified and acting members of the Board of Supervisors of Yavapai County, Arizona, and are sued herein as such officers;

That at the time of the filing of the original complaint in this cause, Frank H. Thomas was a citizen and resident of Gila County, Arizona, and was the duly elected, qualified and acting County Treasurer and Ex Officio Tax Collector of said County; that after the filing of the original complaint in this cause, E. S. Bryant, a citizen and resident of Gila County, Arizona, succeeded the said Frank H. Thomas as the duly elected, qualified and acting County Treasurer of Gila County, Arizona, and was sued herein as such officer, having been made a party defendant in place of the said Frank H. Thomas; that thereafter, Cyril Kennedy, a citizen and resi-

dent of Gila County, succeeded the said E. S. Bryant as a party defendant hereto as such officer;

That W. G. Duncan, a citizen and resident of Gila County, Arizona, at the filing of the original complaint herein, was the duly elected, qualified and acting County Assessor of said county, and was sued herein as such officer; that Margaret T. [234] Harding, a citizen and resident of said Gila County, has succeeded the said W. G. Duncan as said County Treasurer and Ex Officio tax collector, and has been regularly substituted as a party defendant hereto, and is sued herein as such officers;

That the defendants, John H. Armer, Charles Curnow and L. F. Quinn, are citizens and residents of Gila County, Arizona, and are now and at all times herein mentioned were the duly elected, qualified and acting members of and have constituted and do now constitute the Board of Supervisors of said Gila County, and the County Board of Equalization of said county;

That at the time of filing the original complaint herein, Frank Luke, Thad M. Moore and D. C. O'Neil were residents of Maricopa County, Arizona, and were the duly elected, qualified and acting members of and constituted the State Tax Commission and State Board of Equalization of the State of Arizona; that thereafter the said Frank Luke died and was succeeded as such Tax Commissioner and member of the State Board of Equalization by C. W. Peterson, who was thereupon regularly substituted as a party defendant hereto in place of said Frank Luke, and that said C. W. Peterson is a citi-

zen and resident of Maricopa County, Arizona, and is now a party to this suit as a member of the Tax Commission and State Board of Equalization of the State of Arizona.

That all of the successor parties hereto have adopted the acts of their predecessors which have relation to the collection of the taxes herein sought to be enjoined and continue the threats of their predecessors to enforce payment of said taxes.

II.

That this is a suit of a civil nature, in equity, arising under the Constitution and laws of the United States, and [235] that the amount involved herein, exclusive of interest and costs, exceeds the sum or value of Three Thousand ($3,000.00) Dollars.

III.

That the plaintiff now exercises, and from and since the 11th day of February, 1935, has exercised in the City of Phoenix, and the Cities of Glendale and Mesa, in Maricopa County, Arizona, in the city of Tucson, and the Town of Ajo, in Pima County, Arizona, in the Town of Safford, Graham County, Arizona, in the City of Kingman, Mohave County, Arizona, and in the cities of Globe and Miami, and Town of Hayden, in Gila County, Arizona, in the Town of Clifton, Greenlee County, Arizona, in the Towns of Superior, Coolidge and Casa Grande, in Pima County, Arizona, and in the City of Prescott, Yavapai County, Arizona, normal banking powers conferred upon it by law as a national banking as-

sociation, including the receiving of commercial deposits, demand and time saving deposits, evidenced by certificates of deposit, the purchase and sale of government, state and municipal bonds, the maintenance of a trust department, the purchase and discount of commercial paper, the loaning of money on financial statements, and upon collateral security, and upon real estate and chattel mortgages executed to the plaintiff or assigned to and deposited with it as collateral security, and the investment of money in notes, bonds, and mortgages and other securities, and evidences of indebtedness.

IV.

That it was and is provided by Section 1, of Article IX of the Constitution of the State of Arizona, that all taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax.

That it was and is provided by Section 2, of Article IX of the Constitution of the State of Arizona, that there shall [236] be exempt from taxation all federal, state, county and municipal property.

That it was and is provided by Section 3068, Revised Code of Arizona for 1928, that all taxable property within said State must be assessed at its full cash value, and that the term, "full cash value" shall mean the price for which property would sell if voluntarily offered for sale by the owner thereof upon such terms as such property is usually sold, and not the price that might be realized if such property were sold at a forced sale.

That it was and is provided by Section 3069, Revised Code of Arizona for 1928, as amended by Chapter 110, Session Laws of Arizona for 1931, that the property of corporations shall be assessed and taxed, and no assessment shall be made on shares of stock of corporations, nor shall any holder thereof be taxed for such shares, but that said provisions with reference to the taxing of shares of stock shall not apply to banking corporations, building and loan associations or corporations, and corporations or associations engaged in the business of using money wherewith to make money for the owners of their shares, and that the shares of stock of such banking corporations, and other corporations and associations shall be assessed and taxed as other property in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of and be payable by such corporation or association.

V.

That it was and is provided by Section 11, of Article IX of the Constitution of Arizona, that the manner, method and mode of assessing, equalizing, and levying taxes in the State of Arizona, shall be such as may be prescribed by law.

That it was and is provided by Section 3074, Revised Code of Arizona, 1928, that between the first Monday in [237] January, and the first day of May, of each year, the County Assessor, (except as otherwise required by the State Tax Commission) shall ascertain by diligent inquiry and examination all

property in his county subject to taxation, the names of all persons owning, claiming, or having possession or control thereof, determine the full cash value of all such property, and list and assess the same to the person owning, claiming or having the possession, charge, or control thereof.

That it was and is provided by Section 3070, Revised Code of Arizona for 1928, that upon the demand of the Assessor the officers in charge of any banking corporation or corporations or associations engaged in the business of using money wherewith to make money, shall, make out and deliver to the assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares owned by him, the surplus, reserve fund and undivided profits, and the par and market value of the shares, and that the full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return to any officer of the state or the United States, from actual sales of the stock, or from other trustworthy sources, and that every such shareholder shall, where such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein, and if the shareholder fail to do so the assessor shall list and assess such unrendered shares as other unrendered property, and that the taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no

such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the [238] owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3071, Revised Code of Arizona for 1928, that every such corporation or association for the purpose of said assessment shall be considered as located in every county, city or town wherein it has an office for the purpose of carrying on its business, and the shares shall be subject to taxation in any county, city or town wherein it has such office, that the officer of such corporation or association shall state in his statement if his association or corporation is subject to taxation in more than one county, city or town, and the proportion of its assets situated in each thereof, and that the shares of such corporation or association shall be taxed in each county, city or town, for only such portion of their assets as the assets situated in that county, city or town bear to the assets of the entire corporation or association, and that when a bank maintains branches or conducts business in more than one county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches are maintained or business conducted, and the amount apportioned to each county, city or town

shall not be less than the actual cash value of the real and personal property of such bank situated in such county, city or town.

VI.

That on the 11th day of February, 1935, the day plaintiff engaged in the banking business as a national bank, the amount of its common capital stock was $260,000.00, its surplus was $260,000.00, its undivided profits were $90,026.52, making a total as a basis for the valuation of its shares of common stock of $610,026.52. That its common capital stock consisted of 52,000 shares, of the par value of $5.00 each. That to [239] provide the plaintiff with sufficient capital to enable it to comply with the laws and regulations pertaining to national banks in the acquisition and transaction of the banking business which it acquired on said 11th day of February, 1935, the Reconstruction Finance Corporation of the United States of America purchased from the plaintiff, and the plaintiff sold to said Reconstruction Finance Corporation, $1,240,000.00 par value of its preferred stock. That said preferred stock so issued and sold to said Reconstruction Finance Corporation consisted of 198,400 shares of the par value of $6.25 each, and that all of said preferred stock was issued to said Reconstruction Finance Corporation on or prior to said 11th day of February, 1935, and ever since the issuance thereof has been and now is owned and held by and is the property of the

Reconstruction Finance Corporation of the United States of America.

VII.

That on the first day of January, 1936, the amount of the common capital stock of plaintiff was $260,000.00, its surplus was $260,000.00, and its undivided profits were $101,367.14, making a total as the basis for the valuation of its common stock of $621,367.14. That on said date its common capital stock consisted of 52,000 shares of the par value of $5.000 each, and that the amount of its capital stock, surplus, and undivided profits, and the valuation of its shares of common stock, and the number of said shares remained substantially the same as it was on the first day of January, 1936, until after the first Monday in May, 1936.

VIII.

That on or about the 24th day of March, 1936, and prior to the first day of May, 1936, an officer of the plaintiff, duly authorized for said purpose, made and delivered a statement such as is provided for by Sections 3070 and 3071, Revised [240] Code of Arizona for 1928, to each of the assessors of the respective counties in which its main office, or any of its branches was situated, including all of the counties made parties defendant to this suit. That each of said statements showed the number of plaintiff's shares, the names and residences of each shareholder owning and holding the shares of its common stock, and the shares of its preferred stock

above mentioned, the number of shares owned by each shareholder, the amount of capital, surplus and undivided profits as above stated, and the par value of its shares, both common and preferred, as is required by Section 3071, Revised Code of Arizona, for 1928. Each of said statements showed the proportion of plaintiff's assets situated in each of the counties in which its principal office or a branch thereof was situated. That said statement showed the common capital stock of the plaintiff was $260,000.00, that its surplus was $260,000.00, and that its undivided profits were $101,367.14, making a total as a basis for the valuation of its common capital stock of $621,367.14. That said statement also showed that the following percentages of said amount were properly apportioned to the respective counties as follows, to-wit: Maricopa County, 63.54 per cent, Pima County, 16.88 per cent, Graham County, 2.73 per cent, Yavapai County, 2.92 per cent, Gila County, 7.26 per cent, Pinal County, 2.90 per cent, Greenlee County, 1.86 per cent, Mohave County, 1.91 per cent.

IX.

That the tax statutes hereinabove set forth, as now in force in the state of Arizona, have been governing tax laws of the state of Arizona for many years, and that for many years immediately prior to the year 1934, it was the universal practice followed by the County Assessors of the several counties of the state of Arizona, and approved by the

Tax Commission [241] of the State of Arizona, to value for tax purposes the shares of stock of each of the banks in the State of Arizona, at an aggregate amount equal to the capital stock, surplus and undivided profits of each of said banks, as shown by the books of said bank, and that in the year 1934, all or substantially all of the banks in the state of Arizona protested to the State Tax Commission of the State of Arizona, sitting as a State Board of Equalization, against the valuation of their shares of stock on said basis, for the reason that the same constituted an assessment of the capital stock of said banks at its full cash value, when other classes of property in said state, in pursuance of a general understanding among the tax officials of the state were assessed at an amount equal to 60% of their cash value, and that in the consideration of said protests, said State Tax Commission, sitting as a Board of Equalization, in the year 1934, made a thorough examination of the valuation of shares of bank stock in the state of Arizona, and after such examination ordered that shares of bank stock should be valued by the following method: (1) That the statements filed by said banks should be revised and corrected by the use of the best information available; (2) That the shares of stock should be valued at 75% of the capital stock, surplus and undivided profits as shown by said revision of the banks statement. That said Tax Commission made no determination with reference to the taxability of shares of preferred stock of banks owned and held

by Reconstruction Finance Corporation, and expressly left that question to be determined by the courts.

X.

That the State Tax Commission of the State of Arizona, said State Tax Commission consisting of the same individuals as the State Board of Equalization, in the exercise of its supervisory powers over the County Assessors of the State of [242] Arizona, directed the County Assessors of the several counties of the State of Arizona to value for tax purposes for the year 1935, the shares of stock of all banks in the state, at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks, and that the county assessors of the several counties of the state, (except the County Assessor of Mohave County), in pursuance of said instructions of said State Tax Commission, valued for tax purposes for the year 1935, the capital stock of all banks in their respective counties at an amount equal to 75% of the capital stock, surplus and undivided profits of said banks, as shown by the statements filed by said banks.

XI.

That the State Tax Commission of the state of Arizona, said Tax Commission consisting of the same individuals as the State Board of Equalization, who are parties defendant to this suit, issued no instructions to the several county assessors of the state as to the method by which shares of stock

of banks should be valued in said year of 1936, and that as a result of the failure of said Tax Commission to issue such instructions, certain of the county assessors valued bank stock in their respective counties substantially in accordance with the instructions issued by the Tax Commission in the year 1935; that is to say, at 75% of the amount of the capital stock, surplus and undivided profits of said banks, and others of said county assessors valued the capital stock of the banks situated in their counties, at an amount equal to the full value of the capital stock, surplus and undivided profits of said banks, as shown by the books of said banks. That the capital stock of no bank other than the plaintiff was valued for tax purposes for the year 1936 at an amount in excess of 75% of the capital stock, surplus and undivided profits of said bank, the counties in [243] which the capital stock of the banks therein was valued at the full amount of the capital stock, surplus and undivided profits, in the year 1936, being counties in which no bank except the plaintiff was doing business, except Maricopa County, in which the valuation of the shares of stock of all banks therein was reduced to 75% of the capital stock, surplus and undivided profits by the State Board of Equalization.

XII.

That in the year 1934, the taxing officials of the State of Arizona, under the direction of the state Tax Commission and State Board of Equalization,

for the purpose of equalizing the valuation of shares of bank stock with the valuation of other kinds and classes of property, adopted the general plan or policy of assessing the stock of all banks at an amount equal to .75% of the book value of the stock as shown by the bank's statement after proper checking and inquiry satisfied them that the statement fairly reflected the bank's condition. That said general plan or policy was continued to the year 1939, or perhaps longer.

XIII.

That the assessments of plaintiff's shares of stock in the counties of Mohave and Pinal, for the year 1936, were in accord with the aforesaid general plan or policy and were not contested by plaintiff.

XIV.

That the County Assessor of Maricopa County, made his valuation of the plaintiff's shares of stock for tax purposes for the year 1936 in the manner following: He added together the amount of the common capital stock, surplus and undivided profits shown by the statement filed with him by plaintiff as aforesaid, and added to the amount so arrived at the sum of $1,240,000.00, being the par value of the preferred stock of [244] the plaintiff, issued to and owned and held by the Reconstruction Finance Corporation, as hereinbefore alleged, the total so arrived at being the sum of $1,861,367.14. Said County Assessor then took 63.54 per cent of said sum, (said 63.54 per cent being the percentage shown by the

statement filed with him by the plaintiff as the percentage properly apportioned to Maricopa County), thus arriving at $1,182,712.68, as the amount apportioned to Maricopa County, which sum said assessor placed on the tax roll as the assessable value of plaintiff's shares of stock for tax purposes for the year 1936, in said Maricopa County. That of the aforesaid valuation of $1,182,712.68, 63.54 per cent of the sum of $1,240,000.00, or $787,896.00 was and is the valuation placed by said County Assessor upon Maricopa County's proportion of the shares of preferred stock of the plaintiff, owned and held by the Reconstruction Finance Corporation. That said County Assessor intended to and did assess plaintiff's shares of preferred stock owned and held by Reconstruction Finance Corporation at said amount of $787,896.00.

XV.

That the County Assessor of Pima County valued the shares of stock of the plaintiff in his county in the year 1936 by placing a valuation on the several items of tangible real and personal property owned and held by the plainitff in said county, and totaling said valuations of said items of real and personal property and taking said total as the actual cash value of that portion of the capital stock of the plaintiff assessable in Pima County. That the valuation so arrived at by said County Assessor of Pima County was and is $318,510.00.

That the assessment made by said assessor does

not show whether said valuation was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If said valuation is construed as imposed upon plain- [245] tiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Pima county of $6.125 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of $36.78 per share.

XVI.

That the aforesaid valuation by the County Assessor of Pima county was excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, and the undivided profits of $101,367.14, is $621,367.14, which represents the shares of common capital stock of the plaintiff. Of this amount, 16.88 per cent, or the sum of $104,886.77, is properly apportioned to Pima county, representing that portion of plaintiff's shares of common stock apportioned to Pima County. To make allowance for probable shrinkage in book assets and the normal difference between the book value of the assets and the actual value of the shares of stock and to equalize with valuation of other kinds and classes of property, in accordance with the method prescribed by the State Tax Commission as aforesaid, one-fourth thereof, or the sum of $26,221.69 must be deducted, leaving the amount of $78,665.08, as the actual cash value for the year 1936, of that portion of plain-

tiff's shares of common stock which is assessable in Pima County. That the excess over said sum of $78,665.08 assessed against the shares of stock of plaintiff by the County Assessor of Pima County, which is the amount of $239,844.92, was assessed on account of values represented by plaintiff's preferred stock, owned and held by the Reconstruction Finance Corporation.

XVII.

That the County Assessor of Graham County valued the shares of stock of the plaintiff in his county in the year [246] 1936 by placing a valuation on the several items of tangible real and personal property owned and held by the plaintiff in said county and totaling said valuation of said items of real and personal property, and taking said total as the actual cash value of that portion of the capital stock of the plaintiff assessable in Graham county. That the valuation so arrived at by said County Assessor of Graham County was and is $22,470.00. That the assessment made by said assessor does not show whether said valuation was intended to be imposed upon plaintiff's common capital stock or upon plaintiff's preferred stock. If said valuation is construed as imposed upon plaintiff's common stock, it amounts to a valuation of that portion of plaintiff's shares of common stock assessable in Graham County of $0.432 per share, which is the equivalent of a total valuation of plaintiff's shares of common stock in all counties of $15.83 per share.

That the aforesaid valuation by said County Assessor of Graham county was and is excessive and illegal to the extent following: The total of the common capital stock of $260,000.00, the surplus of $260,000.00, and the undivided profits of $101,367.14, is $621,367.14, which represents the shares of common capital stock of the plaintiff. Of this amount, 2.73 per cent, or the sum of $16,963.32, is properly apportioned to Graham county, representing that portion of plaintiff's shares of common stock apportioned to Graham county.

From said sum must be deducted one-fourth thereof, or the sum of $4,240.83, to make allowance for probable shrinkage in book assets and the normal difference between the book value of the assets and the actual value of the shares of stock and to equalize valuations with other kinds and classes of property in accordance with the method prescribed [247] by the State Tax Commission as aforesaid, leaving the amount of $12,722.49, as the true valuation for tax purposes for the year 1936, of that portion of plaintiff's shares of common stock which is assessable in Graham county. That the valuation arrived at by the County Assessor of Graham county in excess of said sum of $12,722.49, said excess being $9,747.51, was assessed upon values represented by preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

XVIII.

That the County Assessor of Yavapai County made his valuation of plaintiff's shares of stock for

tax purposes for the year 1936 in the manner following: He added together the amount of the common capital stock, surplus and undivided profits shown by the statements filed with him by plaintiff as aforesaid, the total so arrived at being the sum of $621,367.14. Said County Assessor then took 2.92 per cent of said sum, (said 2.92 per cent being the percentage shown by the statement filed with him by the plaintiff as the percentage properly apportioned to Yavapai county), thus arriving at $18,143.92 as the amount apportioned to Yavapai County, and then deducted one-fourth of said amount, leaving the sum of $13,607.94 as the assessable value of that portion of plaintiff's shares of common stock properly apportioned to Yavapai County.

That said valuation so made by the County Assessor of Yavapai county was satisfactory to plaintiff, and plaintiff made no objection thereto, either before the County Board of Equalization, or the State Board of Equalization.

XIX.

That the County Assessor of Gila county made his valuation of plaintiff's shares of stock for tax purposes for the year 1936 in the manner following: He added together the amount of the common capital stock, surplus and undivided profits [248] shown by the statement filed with him by plaintiff as aforesaid, the amount so arrived at being the sum of $621,367.14. Said county assessor then took

approximately 7.26 per cent of said sum, (said 7.26 per cent being the percentage shown by the statement filed with him by the plaintiff as the percentage properly assessable to Gila county), thus arriving at $45,110.00 as the amount apportioned to Gail county, which sum said assessor placed on the tax roll as the assessable value of plaintiff's shares of stock for tax purposes for the year 1936 in said Gila county. That said valuation so made by the county assessor of Gila county resulted in a valuation of plaintiff's shares of common stock in that county at 100 per cent of its book value when the shares of stock of all other banks in the state were equalized with the valuations of other kinds and classes of property at 75 per cent of their book value.

XX.

That within the time provided by law, plaintiff filed a written protest against the foregoing valuations of its shares of stock herein complained of with the County Board of Equalization in each of the counties of Maricopa, Pima, Graham and Gila, being all of the counties in which the valuations of its shares of stock are complained of herein, except Yavapai county, in which county the valuation made by the county assessor was afterwards attempted to be increased by order of the State Board of Equalization as hereinafter set forth.

Plaintiff further, within the time provided by law, appeared before the County Board of Equalization in each of said counties in which it filed written

protests as aforesaid, and urged the correction and reduction of the said assessments in all respects herein complained of. That each of said County Boards of Equalization heard the plaintiff and refused and [249] denied any relief to the plaintiff.

XXI.

That none of the aforesaid county Boards of Equalization made any changes in the valuations made as aforesaid by the respective county assessors upon the shares of stock of the plaintiff and that the clerk of each of said boards of supervisors, immediately after the July adjournment of said Boards of Equalization, transmitted to the State Board of Equalization the respective valuations made as aforesaid by the respective county assessors, which valuations were as follows, to-wit:

Maricopa County	$1,182,712.68
Pima County	318,510.00
Graham County	22,470.00
Yavapai County	13,607.94
Gila County	45,110.00

XXII.

That on or about the 5th day of August, 1936, the plaintiff filed a written protest with Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization of the State of Arizona, protesting against the valuations of its shares of stock in Maricopa County, Pima County, Graham County and Gila County, but making no pro-

test whatsoever against the valuation of its shares of stock in Yavapai County; that said protests against the valuations in Maricopa County, Pima County, Graham County and Gila County, set forth all of the objections to said valuations hereinbefore set forth, and on said 5th day of August, 1936, the plaintiff appeared before said Frank Luke, Thad M. Moore and D. C. O'Neil, sitting as a State Board of Equalization, and urged the correction and reduction of said valuations of its shares of stock in Maricopa County, Pima County, Graham County and Gila County, in all respects herein complained of, but plaintiff made no objection, or urged no correction in the assessment of its shares of stock in Yavapai connty; that said defendants, sitting as a Board of [250] Equalization, heard the plaintiff and took plaintiff's protest and objections under consideration, but did not advise plaintiff that they contemplated making any change whatsoever in the valuation placed upon plaintiff's shares of stock in Yavapai County.

XXIII.

That thereafter, and within the time provided by law, the said State Board of Equalization, as a result of its consideration of the protest of the plaintiff and of the protests of other banks situated in Maricopa County, ordered a reduction of 25% from the valuation of plaintiff's shares of stock in Maricopa County; that is to say, it reduced said valuations from $1,182,712.68 to $887,034.51. That the valuations of the shares of stock of all other banks

in Maricopa County were reduced a like percentage by said State Board of Equalization.

XXIV.

That said reduction of the valuations made by the county assessor of Maricopa county of the shares of bank stock in said county, left no bank in the state of Arizona, except the plaintiff, with an assessment upon its shares of stock in excess of 75% of the capital stock, surplus and undivided profits as shown by the books of said bank. That said State Board of Equalization denied any relief to the plaintiff with reference to the valuations placed upon its preferred stock or values represented by said preferred stock by the county assessor of Maricopa county, and denied all relief prayed by plaintiff with reference to the valuations placed upon its shares of stock in the counties of Pima, Graham and Gila, and left the valuations as made by the county assessors in said counties stand as hereinbefore set forth. That with respect to Yavapai County, said State Board of Equalization, without notice to plaintiff as provided by said Section 3065, Revised Code of Arizona for 1928, [251] attempted to increase the assessed valuation of plaintiff's shares of stock in Yavapai county, from the sum of $13,607.94, to the sum of $40,763.84, by attempting to add the sum of $27,155.90, as an assessment upon the preferred stock of the plaintiff held by the Reconstruction Finance Corporation. That said State Board of Equalization arrived at said amount of $27,155.90,

by valuing plaintiff's shares of preferred stock at 75% of their par value, or $960,000.00, and apportioning 2.92%, (being the percentage of its assets apportioned to said county by plaintiff in its statement) of said sum to Yavapai County. That after the action of the State Board of Equalization upon the valuations of plaintiff's shares of stock, said valuations were as follows:

Maricopa County	$887,034.51
Pima County	318,510.00
Graham County	22,470.00
Yavapai County	40,763.84
Gila County	45,110.00

That the said State Board of Equalization before fixing the above figures considered the valuation of the shares of capital stock for the year 1936 of substantially all banks in the State of Arizona, and fixed the valuation of the shares of stock of all of said banks except the plaintiff at an amount equal to 75% of their capital stock, surplus and undivided profits; that in the case of the plaintiff it declined to fix the valuation of plaintiff's shares of stock on the same basis for the reason that the plaintiff had issued preferred stock, owned and held by the Reconstruction Finance Corporation, and that said State Board of Equalization fixed, or allowed to stand as they had been fixed by the Tax Assessors, the valuations herein shown in excess of 75% of plaintiff's common capital stock, surplus and undivided profits, solely by reason of the fact

that it determined that plaintiff ought not to escape taxation on its shares of preferred stock, and that [252] solely by reason of the existence of such preferred stock said State Board of Equalization added the excess amounts above stated to 75% of the common capital stock, surplus and undivided profits as shown by plaintiff's statement, with the object and purpose of requiring plaintiff to pay a tax upon valuations represented by its preferred stock owned and held by the Reconstruction Finance Corporation.

XXV.

That within the time provided by law the said State Board of Equalization fixed the rate of taxation to be levied for state purposes, and transmitted to the Board of Supervisors of each of the respective counties that are parties defendant to this suit a statement of the changes which it had made in the assessment and the rate of tax which was to be levied and collected within said county for state purposes, and each of said Board of Supervisors received said statement and ordered placed on the tax roll the respective valuations made by the respective county assessors as hereinabove alleged as ordered changed by said State Board of Equalization, and that there were thereupon placed upon said tax rolls, and that there now appear on said tax rolls of each of the five counties herein complained of, the following valuations, to-wit:

County	Valuation on Tax Rolls
Maricopa County,	$887,034.51
Pima County,	318,510.00
Graham County,	22,470.00
Yavapai County,	40,763.84
Gila County,	45,110.00

That said valuations are excessive, illegal and void to the extent and for the reasons following:

Said valuation in Maricopa county is excessive and illegal in the sum of $590,922.00, by reason of the fact that said sum is the valuation placed by the State Board of Equalization upon that portion of the $1,240,000.00 preferred stock [253] of the plaintiff apportioned to Maricopa county.

Said valuation in Pima county is excessive and illegal in the sum of $239,844.92, for the reason that said sum, while attributed to values represented by tangible real and personal property in Pima county, in reality represents a portion of the valuation attributed to Pima county of the $1,240,000.00 par value of preferred stock of the plaintiff, owned and held by the Reconstruction Finance Corporation.

Said valuation in Graham county is excessive and illegal in the sum of $9,447.51, for the reason that said sum, while attributed to values represented by tangible real and personal property in Graham county, in reality represents a portion of the valuation attributable to Graham county of the $1,240,000.00 par value of preferred stock of the plaintiff, owned and held by the Reconstruction Finance Corporation.

Said valuation in Yavapai county is excessive and illegal in the sum of $27,155.90, for the reason that said sum was directed to be added to the tax roll by the State Board of Equalization as the value of the portion assessable in Yavapai county of the $1,240,000.00 of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation.

Said valuation in Gila county is excessive and illegal to the extent of $11,276.66, being approximately one-fourth of the amount of the valuations of the common stock of the plaintiff, arrived at by the County Assessor of Gila county for the reason that said County Assessor and the State Board of Equalization made no reduction from the full-book value of the shares of common stock of the plaintiff in Gila county, as they did of the valuation of the shares of stock in counties of the state in which other banks were situated, to equalize the value of plaintiff's shares of stock with valuations placed on the shares of stock of other banks, and other classes of property [254] and moneyed capital in the hands of individual citizens of the state coming into competition with the business of national banks.

XXVI.

That after the completion of the valuation of plaintiff's shares of stock, and the placing thereof on the tax rolls as aforesaid in the respective counties, the Board of Supervisors and the governing bodies of the cities and towns of each of said coun-

ties, (except the City of Phoenix, Maricopa county), finally determined the estimates provided for by Section 3098, Revised Code of Arizona for 1928, and the School Superintendents in said counties furnished to said Boards of Supervisors the estimates provided for by Section 1090, Revised Code of Arizona, 1928, and said Boards of Supervisors assessed taxes for the several amounts estimated as well as the state taxes, at the rate fixed aforesaid upon the taxable property of the county, computed and carried out the real and personal property tax and total tax of every person on said tax rolls, and computed at the proper tax rates determined by the Board of Supervisors, and the State Board of Equalization, upon the aforesaid valuations and entered upon the said tax rolls as taxes upon the shares of stock of the shareholders of the plaintiff and as payable by the plaintiff, the following amounts, to-wit:

Maricopa County	$44,911.17
Pima County	20,048.36
Graham County,	1,334.22
Yavapai County,	2,025.98
Gila County	5,728.90

That upon the completion of the tax rolls for the year 1936, said tax rolls containing thereon the respective items of taxes set forth above, the Chairman of the Board of Supervisors of each of said counties as prescribed by statute, annexed thereto under his hand, a warrant commanding the county

treasurer and ex officio tax collector to col- [255] lect from the several persons named in said tax roll, including plaintiff, one-half of the taxes set opposite their respective names, including all taxes, taxed, assessed and levied aforesaid, on or before the first Monday in November, 1936, and the other one-half of said taxes on or before the first Monday in May, 1937. That said tax rolls, together with said warrants, were delivered to the respective county treasurers of said counties, parties defendant hereto, in the manner and within the time provided by law.

XXVII.

That upon receipt of said assessment and tax roll, each of said county treasurers, being parties defendant hereto, gave official notice specifying that one-half of said taxes, including said illegal and void taxes so levied and assessed upon plaintiff's said shares of stock would be due and payable on the first Monday in September, 1936, and would become delinquent on the first Monday in November in 1936, at 5:00 o'clock P. M., and that the remaining one-half of said taxes would be due and payable on the first Monday in March, 1937, and would become delinquent on the first Monday in May, 1937, at 5:00 o'clock P. M., and that unless said taxes were paid prior to becoming delinquent, interest would accrue thereon from the time of such delinqueney at the rate of ten per cent per annum until paid, or until said property or such part thereof as was necessary had been sold, and thereafter, interest would

accrue thereon at the rate provided in the tax certificates issues covering the sale of said property, but not to exceed fifteen per cent per annum.

XXVIII.

That before the first Monday in November, 1936, and before the filing of this Bill of Complaint, and during the [256] regular office hours of the respective county treasurers who are parties defendant hereto, plaintiff tendered and offered to pay to each of said county treasurers the amount of taxes which plaintiff believes to be *justly due and owing by the* owners and holders of its shares of common stock to said county treasurers for said county and local taxes for the whole year of 1936. The amounts which the plaintiff so tendered and offered to pay to each of said county treasurers are as follows:

Maricopa County,	$14,983.29
Pima County,	4,900.84
Graham County,	673.71
Yavapai County,	677.32
Gila County,	4,296.68

That plaintiff determined the amounts so above tendered by computing the valuations of its common capital stock in the manner in which said county treasurers and State Board of Equalization computed the same, excluding, however, from said computation plaintiff's shares of preferred stock owned and held by the Reconstruction Finance Corporation, and the assets represented thereby. That is,

to say, plaintiff added together its common capital stock of $260,000.00, its surplus of $260,000.00, its undivided profits of $101,367.14, making the sum of $621,367.14, and then took the proper percentage thereof apportioned to each of said counties, to-wit, Maricopa County, 63.54 per cent, Pima county, 16.88 per cent, Graham county, 2.73 per cent, Yavapai county, 2.92 per cent, Gila county, 7.26 per cent, thus making the actual values of plaintiff's shares of common stock in each of said counties as follows:

Maricopa County,	$394,816.68
Pima County,	104,886.77
Graham County,	16,963.32
Yavapai County,	18,143.92
Gila County,	45,110.00
	(approximately)

and then took 75% of each of said amounts, thus arriving at a taxable value in each of said counties for plaintiff's shares of common stock as follows:

[257]

Maricopa County,	$296,112.51
Pima County,	78,665.08
Graham County,	12,722.49
Yavapai County,	13,607.94
Gila County,	33,832.50

and computed the tax at the respective rates as fixed in said counties by the proper authorities thereon, thus arriving at the tax in each of said counties af the above amounts.

That the amount so tendered by plaintiff is the amount of taxes which would have been assessed against its shares of common capital stock in the several counties that are parties defendant hereto by the action of the assessing officials and State Board of Equalization if said taxing officials and State Board of Equalization had applied the same basis of valuation to plaintiff's shares of common capital stock as they applied to the shares of other banks, state and national, doing business in the State of Arizona, and is likewise the amount that the taxing officials and the State Board of Equalization would have assessed plaintiff's shares of common capital stock if they had not attempted to impose additional taxes upon plaintiff by reason of the fact that preferred shares of stock of the plaintiff were owned and held by the Reconstruction Finance Corporation.

XXIX.

That each of the said county treasurers aforesaid refused and continues to refuse to accept payment of the amount tendered upon the ground that said amount tendered was not the full amount of taxes assessed to and payable by plaintiff for the purposes for which it was tendered. That each of said county treasurers, on refusing said tender, declared that it was his duty to collect from plaintiff the amount of taxes assessed against plaintiff's shares of stock that appeared on his books, and that he would proceed to collect the same in accordance with the laws of the State of Arizona. [258]

That plaintiff has been and is willing and able, and has stood ready and will continue to stand ready to pay to each of the above mentioned county treasurers the amounts tendered as aforesaid, and that if it shall be held in this case that the sums which plaintiff has tendered and offered to pay to the said county treasurers, or any of them, for the purposes for which said tenders were made, are less than the amounts found justly and equitably due and owing by the plaintiff to the said county treasurers, or any of them, for 1936 taxes, plaintiff stands ready, able and willing to pay, and will pay to the said county treasurers, and each of them, such other and further sum or sums as shall be found to be just and equitable.

XXX.

That it was and is provided by Section 3101, Revised Code of Arizona for 1928, as amended by Chapter 106, Session Laws of Arizona for 1931, that all taxes levied upon real or personal property shall be a lien upon the property assessed, which lien shall attach on the first Monday in January in each year and shall not be satisfied or removed until such taxes, penalties, charges and interest are paid or the property is finally vested in a purchaser under a sale for taxes, and that said lien shall be prior and superior to all other liens and encumbrances upon said property, except liens and encumbrances held by the state of Arizona. That it is further provided by said section, amended as aforesaid, that personal property shall be liable for taxes levied on real

property and real property shall be liable for taxes levied on personal property, and that a judgment against real property for non-payment of taxes thereon or assessed to the personal property of the same person shall not be prevented by showing that the owner thereof was possessed of personal property out of which the taxes could have been made.

That it was and is provided by Section 3070, Revised Code (259] of Arizona, 1928, that the taxes due upon shares of banking corporations or associations shall be paid by such corporation or association and shall be a lien against and assessed to such shares of stock and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

That it was and is provided by Section 3112 of the Revised Code of Arizona, 1928, that the county treasurer may at any time after receiving the tax roll, collect by distraint and sale, if not otherwise collected, the taxes due on personal property; that the sale must be at public auction after one week's notice of the time and place thereof, and must be of a sufficient amount of the property issued to pay the taxes, fees and costs, and that on payment of the purchase price and the delivery of the property with a bill of sale thereof, title thereto vest in the purchaser.

That it was and is provided by Section 15 of Title 103 of Arizona Session Laws of 1931, that taxes upon real estate if unpaid, shall become delinquent, first half, on the first Monday in November, and second half, on the first Monday in May, of each year, and that it was and is provided by Section 17 of said Chapter 103, that all taxes shall bear interest from the time of delinquency at the rate of ten per cent per annum until paid, and a fraction of a month shall be counted as a whole month, and that it was and is further provided by Section 18 of said Chapter 103, that all real property upon which the taxes, including personal property taxes secured thereby are unpaid and delinquent, shall be subject to sale as in said chapter provided. [260]

XXXI.

That the taxes levied and assessed upon plaintiff's shares of stock for the year 1936 in the manner aforesaid, whether legal or illegal, became payable on or before the second day of November, 1936.

Plaintiff in the year 1936, and at all times since, has owned and held real estate in all of the counties which are parties defendant to this suit, except Yavapai County.

That many of the owners and holders of plaintiff's shares of stock owned and held during the year 1936, and now own and hold real estate in one or more of said counties, and that the aforesaid illegal taxes are an apparent lien or cloud upon the real estate owned by the plaintiff in the respective

counties and upon the real estate of the shareholders of the plaintiff in the respective counties as well as upon said shares of stock and that said shares of stock on said 2nd day of November, 1936, became subject to seizure and sale for said taxes in the manner provided by the Statutes of Arizona above set forth.

That it was impossible for plaintiff to determine from the assessments made in Pima and Graham counties whether the taxes imposed in said counties were imposed solely on plaintiff's shares of common stock or upon both common and preferred shares and if plaintiff assumed that said taxes were imposed upon both classes of stock, it was impossible to apportion the same between the common and preferred shares. Hence, if plaintiff paid said taxes as demanded by the treasurers of said two counties it would not know to which class of its shareholders to charge said payment, or if it charged the same to both classes, it would not know what amount to charge to each, and if it attempted to secure reimbursement by withholding payment of dividends or refusing transfers of shares, it would subject itself to a separate suit for damages by each of its [261] shareholders.

That plaintiff filed its original Bill of Complaint in this court before the second day of November, 1936, and prayed for the issuance of a temporary injunction restraining the defendants from proceeding to collect the taxes complained of; that after said complaint was filed, a stipulation was entered

into by and between the plaintiff and the several defendants by which it was stipulated and agreed that the several defendant county treasurers would accept the amount of taxes theretofore tendered by the plaintiff to each of them without prejudice to their right to collect the remainder at any future time and that the plaintiff might withdraw its application for temporary injunction and that the said defendants would refrain from proceeding to enforce collection of the taxes alleged by plaintiff to be illegal during the pendency of this suit, but that said defendants or any of them should have the right at any future time to proceed to collect said taxes in the manner they thought proper and that if they did so proceed, or threaten to proceed, plaintiff should have the right to renew its application for temporary injunction. That said stipulation expressly provided that the rights of any party to prosecute or defend this suit should not be prejudiced or affected in any way by said stipulation, or anything done in pursuance thereof except in so far as said stipulation expressly provided therefor. That said stipulation was approved by an Order regularly made and entered by the court.

That on or about the 10th day of April, 1939, the County Treasurer of Pima County gave notice to the plaintiff that he would proceed to collect all of the taxes assessed in his [262] county against plaintiff's shares of stock for the year 1936, including those alleged to be illegal by the plaintiff, as well as those admitted to be legal.

That by reason of the aforesaid action of the County Treasurer of Pima county, all of the defendants renewed their threat to enforce collection of the taxes hereby sought to be enjoined. That those county officers made parties defendant hereto who have come into office since filing the original Bill of Complaint continue the threat of their predecessors to enforce collection of said taxes.

XXXII.

That it was and is provided by Section 3065, Revised Code of Arizona for 1928, that a taxpayer dissatisfied with the amount of his assessment as reviewed by the State Board of Equalization may appeal from said assessment to the Superior Court of the county where the taxes are payable; that the remedy of such appeal was and is not available to the plaintiff to relieve it from the burden of the illegal taxes herein complained of for the following reasons:

1. That said appeal is by said Section 3065 limited to a determination of the full cash value of the property assessed, and does not give the party appealing the right to question the legality of the tax imposed or any part thereof.

2. That the judgment of the court on such appeal is by said Section 3065, limited to finding the full cash value of the property assessed and said judgment cannot provide for the elimination from the assessment of property illegally or wrongfully assessed.

3. That such appeal would have to be taken separately from the valuation made by each of the five counties to the Superior Court of that county. The question of apportionment among said five counties would have to be determined separately in [263] each of said counties without an opportunity for any county, except the one in whose Superior Court the particular suit was pending, to be heard on said question, with the result that there would probably be five different decisions and five different appeals to the Supreme Court, all of which would have to be determined without opportunity for the several counties to directly contest their respective contentions.

4. That no such appeal can be taken unless the appellant first pays to the said county treasurer the amount of taxes levied against his property, and unless so paid the appeal must be dismissed by the court, and there is no provision for the county treasurer withholding the disbursements of the money paid by appellant until the determination of said appeal and the judgment on the appeal, if in favor of the appellant can only be a judgment against the county for the amount of the excess taxes paid.

5. That said appeal lies only to the Superior Court of the county in which the tax is assessed and is not available in a Federal Court; that such appeal is a judicial and not an administrative remedy and plaintiff, under the constitution and laws of the United States, is not obliged to resort thereto but may bring its action in a Federal Court of Equity.

XXXIII.

That it was and is provided by Section 55 of Chapter 103 of Arizona Session Laws for 1931, that no person upon whom a tax has been imposed under any law relating to taxation shall be permitted to test the validity thereof either as plaintiff or defendant, unless such taxes shall first have been paid to the proper county treasurer together with all penalties thereon and that no injunction shall ever issue in any court or proceeding in any court against the state or against any county, municipality or officer thereof, to prevent or enjoin the col- [264] lection of any tax levied.

That it was and is provided by the aforesaid Section 53, that after payment of taxes an action may be maintained to recover any tax illegally collected, and if the tax due shall be determined to be less than the amount paid, the excess shall be refunded in the manner "hereinbefore provided", but that said Chapter 103, Arizona Session Laws of 1931, wholly fails to provide in what manner said refund may be made.

That it was and is provided by Section 876 of the Revised Code of Arizona for 1928, that the treasurers of the several counties shall transmit to the state treasurer all money in the county treasury belonging to the state, or collected for it within ten days after receipt of a letter from the state treasurer to that effect.

That it was and is provided by Section 3107, Revised Code of Arizona for 1928, that the county

treasurer shall pay to the treasurer of each city or town in his county, on the first day of each month in each year, all money in his hands collected for the previous month on taxes for said city or town.

That it was and is provided by Section 1029, Revised Code of Arizona for 1928, that the county treasurer shall receive and hold as a special fund all school moneys, and keep a separate account thereof, and when it is apportioned among the school districts, shall keep a separate account for each district, notify the County School Superintendent on the first of each calendar month of the amount of the county school fund and special district funds on hand in the treasury to the credit of such fund, and pay over on the warrants of the county school superintendent duly endorsed by the person entitled to receive the same, any and all such money.

That there is no provision in the laws of the state of Arizona requiring or permitting county treasurers to withhold [265] from apportionment or distribution to the state or city or towns, or school districts, or other legal subdivisions therein, any tax money paid to them under protest or as a condition precedent to the appeal provided by Section 3065, Revised Code of Arizona for 1928, from the valuation fixed by the State Board of Equalization.

XXXIV.

That the Supreme Court of the state of Arizona has construed Section 55, Chapter 103 of the Session Laws of Arizona for 1931, so as to give a taxpayer

who pays taxes under protest and sues to recover the same an ordinary judgment against the county into whose treasury the money is paid by the taxpayer. That said court has construed said Section 55 as not creating a trust fund of the tax money paid under protest, and as not requiring the county treasurer to withhold distribution of said tax moneys so paid under protest, and as not requiring said county treasurer to refund the particular moneys paid to him, and has further interpreted said Section 55, together with sections construed together therewith as giving to the taxpayer who pays his taxes under protest merely the right to an ordinary judgment against the county on an equality with other general obligations of the county. As thus construed, said Section 55 gives to the taxpayer paying taxes under protest; if the taxes are shown to have been illegal, a judgment against the county which it is the duty of the Board of Supervisors of the county to pay out of funds in the county treasury not otherwise appropriated, or, if there are no such funds, it becomes the duty of the Board of Supervisors to budget the judgment as a county expense and levy a tax to pay it.

That if plaintiff had paid the taxes sought to be enjoined in this suit when the original complaint was filed and had brought immediate suits to recover the same and had promptly [266] obtained judgment against the respective counties parties hereto, it would in all probability have realized on

said judgments against the counties of Pima, Graham, Yavapai and Gila, within the period of one year from the date that the judgment became final, but that the financial affairs of the county of Maricopa at the time when the original complaint in this suit was filed and for some time thereafter were such that any judgment obtained by plaintiff against Maricopa County would have remained unpaid for three years from the date of said judgment; that the financial condition of Maricopa County began to improve immediately after the year 1935, and from and after approximately three years from the date of the filing of the original complaint herein, any judgment obtained against Maricopa County would have been paid within a year after it became final.

XXXV.

That the assessments made or attempted to be made on plaintiff's shares of stock in Pima and Graham counties are based upon a valuation of the tangible properties owned and held by plaintiff in said counties. That the taxing officials of said counties took the position that said method of valuation was justified by the concluding sentence of Section 3071 Revised Code of Arizona for 1928. At the time of the trial the taxing officials of said Pima County and Graham County took the position that any excess valuation imposed upon plaintiff's shares of stock in all of the counties by reason of the different methods of valuation prescribed by the first portion of said Section 3071, Revised Code of Arizona for

1928, which was followed by the counties other than Pima and Graham and that prescribed by the concluding sentence of said Section 3071, which was purported to be followed by said Pima and Graham Counties must be borne by plaintiff and its stockholders as additional valuation. This position was first taken by [267] Pima and Graham counties upon their filing of the joint and several answers of the defendants to the amended and supplemental bill of complaint which was filed in July, 1940, and that prior to said date plaintiff believed and was justified in believing that said Pima and Graham counties were attempting to cast the excess valuation produced by the different methods of assessment in the different counties upon the other counties in any proceeding involving said taxes and such issue, if it had been raised, could have been determined only in an equitable proceeding to which the several counties were parties.

That subsequent to the filing of the original complaint in this cause, at the time fixed by law for assessing taxes for the year 1937, the taxing officials of the several counties, parties hereto, and of other counties in the State of Arizona, in which plaintiff has branches, assessed taxes for the year 1937 upon plaintiff's shares of stock; that all of such assessments were reviewed at the proper time by the State Board of Equalization; that the said Board eliminated all values represented by plaintiff's preferred stock from such assessments for said 1937

taxes, except that in the case of Pima county the assessment was again made for an amount equal to the full value of the tangible, real and personal property owned by the plaintiff and situated in that county, said Pima county thus again assessing values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and said State Board of Equalization thus again declined to eliminate said value from said assessment and said Pima county imposed a tax of approximately $11,400.00 on values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation. Plaintiff did not appeal from the action of said Board of Equalization under Section 3065, Revised Code of Arizona for 1928, but paid the full tax assessed, under protest, [268] and sued to recover said sum of $11,400.00 from Pima county, or, in the alternative, if Pima county's method of assessment should be found correct by the court, to recover said sum pro rata from the other counties to which it was paid.

The trial court held that plaintiff's exclusive remedy provided by the State Law was by appeal to the Superior Court of the county, under Section 3065, Revised Code of 1928, and that plaintiff had no remedy to pay the tax under protest and recover the same under Section 55, Chapter 103, Session Laws of 1931. On or about June 30, 1941, and after this court had rendered its decision in favor of the plaintiff herein, the Supreme Court of Arizona re-

versed the said decision of the trial court holding that the remedy under Section 55, Chapter 103, Session Laws of 1931, was available to plaintiff. Prior to said decision of June 30, 1941, there was no decision by the Supreme Court of Arizona authoritatively passing upon the question. Said Supreme Court had once said by way of dictum that the remedy provided by Section 55, Chapter 103, Session Laws of 1931, was available only when the tax was assessed under an unconstitutional law, and again it had said by way of dictum that the remedy provided by Section 55, Chapter 103 Session Laws of 1931, was available whenever no other remedy was provided by law. There being conflicting declarations by it, said Supreme Court did not consider itself bound by their expression and deemed the question wholly open for future decision until it determined the question by its decision of June 30, 1941.

XXXVI.

That at no time prior to the decision of this court in plaintiff's favor was there available to plaintiff a plain, speedy and adequate remedy by payment of the illegal taxes, and suing to recover the same, and plaintiff is entitled to maintain this suit in equity for the purpose of preventing a multiciplicity of suits, and to obtain an adjudication of the proper apportionment of taxes between the several counties parties hereto.

XXXVII.

That by reason of the provisions in the statute of the state of Arizona, prohibiting the issuance of an injunction to prevent the collection of illegal taxes, plaintiff at all times prior to the decision of this court in plaintiff's favor, was without a plain, speedy and adequate remedy in the courts of the state of Arizona, and had no remedy [269] except in the United States District Court, for the District of Arizona.

XXXVIII.

That the plaintiff has exhausted all administrative remedies available to it under the statutes and laws of the state of Arizona.

XXXIX.

That plaintiff, unless granted the relief prayed for in its complaint, will suffer great and irreparable damage and injury, and will be subjected to a multiplicity of suits, and has no plain or adequate remedy at law.

XL.

That a large part of the taxes, the collection of which is herein sought to be enjoined is attempted to be levied and imposed upon the shares of preferred stock of the plaintiff owned and held by the Reconstruction Finance Corporation of the United States of America. That such levy and collection of taxes by the state or any subdivision or municipality thereof is expressly prohibited by the Act of Congress approved March 20, 1936, which act

expressly provides that such shares of preferred stock of national banks shall not be subject to taxation so long as they are owned and held by the Reconstruction Finance Corporation. That under the provisions of Sections 3069 and 3070, of the Revised Code of Arizona, 1928, no taxes are imposed upon national banking associations, but taxes are imposed upon the shareholders of such associations, and such associations are required to pay the taxes imposed on the shares of stock held by such shareholders as the agents of such shareholders. That under the provisions of said sections, it is the duty of plaintiff to pay any taxes legally levied upon its shares of stock, both common and preferred, and the penalties imposed by the statutes of Arizona will be imposed upon [270] the plaintiff if it fails to pay any such taxes so legally levied and imposed.

That under the provisions of said Sections 3069 and 3070, of the Revised Code of 1928, plaintiff is required to deduct any taxes paid by it as the agent of its shareholders from dividends becoming payable to its shareholders. That by the provisions of the Act of Congress, approved March 20, 1936, the Reconstruction Finance Corporation is precluded from permitting the plaintiff to deduct any taxes levied upon the shares of preferred stock owned and held by it, so that if plaintiff is compelled to pay the taxes imposed upon its shares of preferred stock as hereinbefore set forth, it will be compelled to pay taxes levied upon the property of another, which it

will have no means of recovering from the owner of said property, that is, the Reconstruction Finance Corporation, and that by being compelled to pay such taxes, plaintiff will be deprived of its property without due process of law.

That if it be held that any of the taxes sought to be enjoined herein are not levied or imposed upon plaintiff's shares of preferred stock the taxing officials or the State Board of Equalization of the state of Arizona have intentionally imposed taxes upon its shares of common stock at a greater rate than they have imposed taxes upon the shares of stock of all other banks, state and national, in the state of Arizona, in violation of Section 1 of Article IX of the Constitution of Arizona prohibiting discrimination in assessment of taxes upon the same class of property and also in violation of Section 548, Title 12, United States Code Annotated, providing that shares of stock in national banks shall not be taxed at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the state coming into competition with the business of national banks. [271]

XLI.

That plaintiff herein claims the right, privilege and immunity under the constitution and laws of the United States, of not being subjected to the payment of taxes imposed upon its shares of preferred stock owned and held by the Reconstruction Finance Corporation, and also the right, privilege

and immunity of not being assessed for taxes on its shares of stock in violation of Section 548, Title 12, United States Code Annotated, and of not being deprived of its property without due process of law by an illegal and discriminatory assessment of taxes.

CONCLUSIONS OF LAW

I.

That the Act of Congress of March 20th, 1936, exempting preferred stock of banks from state and local taxation while such stock is owned and held by Reconstruction Finance Corporation, is constitutional. Those provisions of said Act which operate retroactively are of equal validity with those that operate prospectively. This case is not affected by the retroactive provisions as the taxes involved in this case were not levied until several months after said Act became a law.

II.

That the valuation imposed by Marjcopa county upon plaintiff's shares of stock for the tax year 1936 was to the extent of $590,922.00 imposed upon plaintiff's shares of preferred stock owned and held by Reconstruction Finance Corporation, and that the taxes levied by Maricopa County as payable by plaintiff for the tax year 1936 were to the extent of $29,927.88, levied upon plaintiff's shares of preferred stock which have at all times been owned and held by Reconstruction Finance Corporation.

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III.

That the valuation of $318,510.00 which Pima county claims it placed upon plaintiff's shares of common stock for the tax year 1936 was not made in accordance with the concluding sentence of Section 3071, Revised Code of Arizona for 1928, nor any other statute of the State of Arizona, and was void and of no effect to the extent of $239,844.92, which was imposed upon property values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and of the taxes levied by Pima county for the tax year 1936, as payable by plaintiff, $15,147.52 was void and uncollectable as levied upon values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation.

IV.

That the valuation of $22,470.00 which Graham county claims it placed upon plaintiff's shares of common stock for the tax year 1936 was not made in accordance with the concluding sentence of Section 3071 Revised Code of Arizona, 1928, nor any other statute of the State of Arizona, and was void and of no effect to the extent of $9,447.51, which was imposed upon property values represented by plaintiff's preferred stock owned and held by Reconstruction Finance Corporation, and of the taxes levied by Graham county for the tax year 1936 as payable by plaintiff, $660.51 was void and uncollectable as levied upon values represented by plain-

tiff's preferred stock owned and held by Reconstruction Finance Corporation.

V.

That the increase of $27,155.90 made in the valuation of plaintiff's shares of stock in Yavapai county by the direction of the State Board of Equalization was void and of no effect: (a) For the reason that no information of such proposed increase was given to the plaintiff, as is required by Section 3063, Revis- [273] ed Code of Arizona, 1928, and, (b) For the reason that said proposed increase was an attempt to assess the preferred stock owned and held by Reconstruction Finance Corporation. That the amount of said taxes attempted to be levied upon plaintiff's shares of stock on account of said proposed increase was the sum of $1,348.66, and was wholly void.

VI.

That the valuation placed by Gila county upon plaintiff's shares of stock for the tax year 1936 was invalid to the extent of $11,276.66, and of the tax levied for Gila county for the tax year 1936 as payable by plaintiff, $1,432.22, was invalid for the following reasons: (a) Said taxes were levied in violation of Section 548, Vol. 12, United States Code Annotated, prohibiting the taxation of shares of stock of national banks at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens coming into competition with the business of national banks, and (b) Said taxes

were levied in violation of Section 1 of Article IX of the Arizona Constitution, providing for uniformity in taxation of property of the same class.

VII.

That if defendants' contention that the valuations made by Maricopa, Pima and Graham counties were not in fact valuations of plaintiff's preferred stock or property values represented by such preferred stock, be accepted, it will necessarily follow that such valuations were illegal and void for the following reasons: (a) Each of them resulted in a violation of Section 548, Vol. 12, United States Code Annotated, prohibiting the taxation of shares of stock of national banks at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens coming in competition with the business of national banks, and (b) Each of them resulted [274] in a violation of Section 1 of Article IX of the Arizona Constitution requiring uniformity in the taxation of property of the same class.

VIII.

That the five counties parties defendant to this suit were properly joined to prevent a multiplicity of suits. While the assessments in some of the counties present questions not presented by the assessments in other counties the important questions of law and fact are presented by each of said assessments and should properly be determined in a single suit. The questions to be determined do not

involve separate taxes in the five different counties, but one tax imposed upon plaintiff's shares of stock under Section 3070, and apportioned among the several counties under Section 3071, Revised Code of Arizona, 1928.

IX.

That the appeal proceeding provided for by Section 3065 Revised Code of Arizona for 1928, is a judicial, not an administrative remedy, and is not available in the federal courts and that plaintiff under the federal law as it existed when this suit was begun, was not required to resort to such appeal proceeding.

X.

That the taxpayer is plaintiff in an appeal proceeding under Section 3065, Revised Code of Arizona for 1928, and is not entitled to remove such appeal proceeding to the federal courts.

XI.

That at all times prior to the decision of this court in plaintiff's favor, plaintiff had no plain and adequate remedy by paying the taxes sought to be enjoined and suing to recover them under Section 55, Chapter 103 Session Laws of 1931, for the reason [275] that under the decisions of the Supreme Court of Arizona, it is undetermined and doubtful if such remedy was available and a decision of the Superior Court of Pinal County, Arizona, received in evidence in this case, held it was not available.

XII.

That inasmuch as it appears from the record in this case that all taxes admitted to be owing to the respective defendants have been paid to the respective county treasurers, under stipulations in this case, and it is admitted by the defendants that the amount so paid, is the proper amount in the event plaintiff's legal contentions are sustained and the court has found the issues in plaintiff's favor, plaintiff is entitled to an injunction enjoining the several county treasurers, parties defendant hereto, from collecting any further taxes from the plaintiff or its shareholders for the year 1936, and plaintiff is entitled to its costs.

DAVE W. LING,
Judge.

Dated: October 8, 1941.

[Endorsed]: Received copy of within this 23rd day of June, 1941. Richard F. Harless, Leslie C. Hardy, Charles B. McAlister, Attorneys for Maricopa Co. et al. Joe Conway, Attorney General, State of Arizona.

[Endorsed]: Pltfs. Proposed Findings, etc. Filed Jun. 23, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Wm. H. Loveless, Chief Deputy Clerk.

[Endorsed]: Findings of Fact and Conclusions of Law. Filed Oct. 8, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Wm. H. Loveless, Chief Deputy Clerk. [276]

In the District Court of the United States
For the District of Arizona

No. E-350-Phoenix

THE VALLEY NATIONAL BANK OF PHOENIX,

Plaintiff,

vs.

MARICOPA COUNTY, et al.,

Defendants.

JUDGMENT ENJOINING COLLECTION OF TAXES

This cause came on regularly for trial on the 29th day of November, 1940, before the Honorable Dave W. Ling, Judge of the District Court of the United States for the District of Arizona, a jury having been waived by all parties to said cause. Evidence having been received and the trial concluded on said date, the case was submitted to the court for its consideration by counsel for the respective parties.

The court, after due consideration having found the issues in favor of plaintiff, and Findings of Fact and Conclusions of Law having been signed by the court and filed herein;

It Is Ordered, Adjudged and Decreed that the following taxes for the tax year of 1936, were legally levied against the holders of the shares of common

stock of the plaintiff and were payable by the plaintiff as and for state, county, school district and other local taxes (except City of Phoenix taxes) and were collectible by the respective County Treasurers of said counties from the plaintiff as follows:

Maricopa County	$14,983.29
Pima County	4,900.84
Graham County	673.71
Yavapai County	677.32
Gila County	4,296.68 [277]

That all other and further taxes levied or assessed or attempted to be levied and assessed as state, county, school district and other local taxes (except City of Phoenix taxes) in the above named counties for the year 1936, upon plaintiff's shares of stock or as payable by plaintiff were and are illegal and void.

That on or about the 7th day of December, 1936, the plaintiff entered into a stipulation with the respective County Treasurers who are parties to this suit, approved by the order of this court in this cause, by which it was provided that all of the above mentioned taxes found to be legal and valid would be paid by the plaintiff to the respective County Treasurers without prejudice to the further prosecution or defense of this suit, as to the balance of the taxes sought to be enjoined by the plaintiff. That in pursuance of said stipulation the plaintiff has paid to the treasurers of Maricopa, Pima, Graham,

Yavapai and Gila counties, respectively, the amount of the taxes hereinabove found to be legally assessed against plaintiff's shareholders and payable by the plaintiff in said counties.

That the defendants hereto have no legal right, power or authority to collect any further taxes for the year 1936, from the plaintiff.

That the defendants hereto have no legal right, power or authority to levy or cause to be levied any further taxes against the plaintiff or its shareholders, payable in the aforesaid counties as and for taxes for the year 1936.

It Is Further Ordered, Adjudged and Decreed that the respective county treasurers of the five counties herein named, their deputies, agents and servants, be and they hereby are permanently restrained and enjoined from collecting any further moneys from the plaintiff or its shareholders, as and for said county, school district or other local taxes for the year 1936 [278] (except City of Phoenix taxes), and that plaintiff have and recover from the defendants its costs herein incurred, to be taxed by the clerk of this court.

Done in open court this 8th day of October, 1941.

[Endorsed]: Received copy of within this 23rd day of Jun., 1941. Richard F. Harless, Leslie C. Hardy, Charles B. McAlister, Attorneys for Maricopa County, et al. Joe Conway, Attorney General, State of Arizona.

[Endorsed]: Pltfs. Proposed Judgment. Filed Jun. 23, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Wm. H. Loveless, Chief Deputy Clerk.

[Endorsed]: Judgment. Filed Oct. 8, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Wm. H. Loveless, Chief Deputy Clerk. [279]

[Title of District Court and Cause—E-333.]

NOTICE OF APPEAL

Notice Is Hereby Given:

That Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa [280] County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and Constitut-

ing the Board of Supervisors and County Board of Equalization of Pima County, Arizona, do hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment rendered in the above entitled Court and cause on the 8th day of October, 1941.

Dated the 22d day of December, 1941.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona

LESLIE C. HARDY
Deputy County Attorney, Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona. [281]

J. MERCER JOHNSON
County Attorney, Pima County, Arizona
Court House, Tucson, Arizona

CONNER & JONES

By GERALD JONES

Special Attorneys for Pima County, Arizona

303-6 Valley National Building

Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [282]

[Title of District Court and Cause—E-350.]

NOTICE OF APPEAL

Notice Is Hereby Given:

That Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa [283] County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye,

as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; Pima County, Arizona; Wallace S. Brainsford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona, do hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment rendered in the above entitled Court and cause on the 8th day of October, 1941.

Dated this 22d day of December, 1941.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona

LESLIE C. HARDY
Deputy County Attorney, Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona. [284]

J. MERCER JOHNSON
County Attorney, Pima County, Arizona
Court House, Tucson, Arizona

CONNER & JONES
By GERALD JONES
Special Attorneys for Pima County, Arizona
303-6 Valley National Building
Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [285]

[Title of District Court and Cause—E-333.]

BOND ON APPEAL

Know All Men By These Presents:

That we, Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa [286] County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona, as principals, and Fidelity and Deposit Company of Maryland, of Baltimore, Maryland, a corporation, as surety, are firmly held and bound unto The Valley National Bank, of Phoenix, plaintiff above named, in the sum of Two Hundred Fifty Dollars ($250.00) lawful money of the United States of America, to be paid to the said The Valley National Bank, of Phoenix, its successors or assigns, for which payment well and truly to be made, we bind ourselves, our successors and assigns firmly by these presents.

The condition of this obligation is such that,

Whereas, a certain judgment was rendered and entered on October 8th, 1941, in the above entitled Court and cause; and,

Whereas, the same was in favor of the above named plaintiff and against the principals on this bond, and others; and,

Whereas, the said principals have appealed to the United States Circuit Court of Appeals for the Ninth Circuit [287] from said judgment;

Now, Therefore, if the said principals above named shall prosecute their said appeals with effect and shall pay all costs which have accrued in the United States District Court for the District of Arizona and which may accrue in the United States Circuit Court of Appeals for the Ninth Circuit, then this obligation shall be void; otherwise it shall remain in full force and effect.

In Witness Whereof, said principals and surety have executed these presents on this 22d day of Dec., 1941.

MARICOPA COUNTY, ARIZONA,

By RICHARD F. HARLESS
Its Attorney

W. H. LINVILLE
County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona

J. D. BRUSH
County Assessor of Maricopa County, Arizona
GEO. FRYE
CHAS. H. FIELDS
JOHN A. FOOTE
As Members and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona

[Seal of Board of Supervisors Maricopa County]

PIMA COUNTY, ARIZONA
By J. MERCER JOHNSON
Its Attorney [288]
WALLACE S. BRANSFORD
County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona
CHARLES M. TAYLOR
County Assessor of Pima County, Arizona
R. H. MARTIN
Chairman
THOMAS COLLINS
Member
J. B. MEAD
Member
Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona

[Seal of Board of Supervisors] Principals.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND
By C. A. DRUMMOND
Attorney-in-Fact

[Corporate Seal] Surety.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [289]

[Title of District Court and Cause—E-350.]

BOND ON APPEAL

Know All Men By These Presents:

That we, Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa [290] County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and constitut-

ing the Board of Supervisors and County Board of Equalization of Pima County, Arizona, as principals, and Fidelity and Deposit Company of Maryland of Baltimore, Maryland, a corporation, as surety, are firmly held and bound unto The Valley National Bank, of Phoenix, plaintiff above named, in the sum of Two Hundred Fifty Dollars ($250.00) lawful money of the United States of America, to be paid to the said The Valley National Bank, of Phoenix, its successors or assigns, for which payment well and truly to be made, we bind ourselves, our successors and assigns firmly by these presents.

The condition of this obligation is such that,

Whereas, a certain judgment was rendered and entered on October 8th, 1941, in the above entitled Court and cause; and,

Whereas, the same was in favor of the above named plaintiff and against the principals on this bond, and others; and,

Whereas, the said principals have appealed to the United States Circuit Court of Appeals for the Ninth Circuit [291] from said judgment;

Now, Therefore, if the said principals above named shall prosecute their said appeals with effect and shall pay all costs which have accrued in the United States District Court for the District of Arizona and which may accrue in the United States Circuit Court of Appeals for the Ninth Circuit, then this obligation shall be void; otherwise it shall remain in full force and effect.

In Witness Whereof, said principals and surety have executed these presents on this 22d day of Dec., 1941.

MARICOPA COUNTY, ARIZONA,

By RICHARD F. HARLESS
Its Attorney

W. H. LINVILLE
County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona

J. D. BRUSH
County Assessor of Maricopa County, Arizona

GEO. FRYE
CHAS. H. FIELDS
JOHN A. FOOTE
As Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona

[Supervisors Seal]

PIMA COUNTY, ARIZONA

By J. MERCER JOHNSON
Its Attorney [292]

WALLACE S. BRANSFORD
County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona

CHARLES M. TAYLOR
County Assessor of Pima County, Arizona

R. H. MARTIN
Chairman

THOMAS COLLINS
Member

J. B. MEAD
Member

Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona

[Seal of Board of Supervisors] Principals.

FIDELITY AND DEPOSIT COMPANY OF MARYLAND

By C. A. DRUMMOND
Attorney-in-Fact

[Corporate Seal] Surety.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [293]

[Title of District Court and Cause—E-333.]

STATEMENT OF POINTS BY MARICOPA COUNTY AND OFFICIALS THEREOF

upon which they rely for a reversal of the judgment: [294]

I.

There is no finding by the Court or contention by appellee that the preferred stock of the appellee held by the Reconstruction Finance Corporation was excessively valued for the year 1935. It had been purchased by the Reconstruction Finance Corporation at a price equal to its par value in February, 1935, to-wit: $1,200,000.00, and was valued for 1935 at 75% of that sum (Findings VI, XII, XXVII). The only question involved on this appeal is whether the Act of Congress of March 20th, 1936, Title 12, U. S. C. A. 51 (d) (Finding XXXIX) voided the taxes for 1935 on such preferred stock.

II.

Said Act of Congress in so far as it purports to operate retroactively to destroy the tax levied pursuant to the statutes of the State of Arizona for the year 1935 upon the preferred stock of the appellee held by the Reconstruction Finance Corporation is unconstitutional and should be ignored by the courts because the tax for that year had upon the effective date of said Act become a fixed, valid lien, then payable and to the extent of one-half thereof delinquent

by virtue of the statutes of the State of Arizona (Finding XXIX) and was protected by:

(a) The due process clause of the Fifth Amendment to the Constitution of the United States;

(b) The reservation and protection of sovereign powers of states by the Tenth Amendment to the Constitution of the United States.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona

[295]

LESLIE C. HARDY
Deputy County Attorney,
Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

J. MERCER JOHNSON
County Attorney of Pima
County, Arizona
Court House, Tucson, Arizona

CONNER & JONES
By GERALD JONES
Special Attorneys for Pima
County, Arizona
303-6 Valley National Building,
Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [296]

[Title of District Court and Cause—E-333.]

STATEMENT OF POINTS BY PIMA COUNTY AND OFFICIALS THEREOF

upon which they rely for a reversal of the judgment: [297]

I.

While the situation in Pima County is factually somewhat different from that of Maricopa County, the case of the appellee as found by the Court is in effect the same, being based on the finding that the tax levied by Pima County in 1935 to the extent of $188,501.20 (Finding XV) is in reality a tax upon the preferred stock of appellee held by the Reconstruction Finance Corporation (Finding XV and XXVII). If that preferred stock was taxable, the assessment of Pima County was greatly less than would have been the case if the preferred stock had been appraised at its reasonable value. Pima County's share of valuation, as fixed by appellee, was 26.53% for the year 1935 (Finding VII). Such percentage of the reasonable value of the preferred stock, 75% of $1,200,000.00, equals $238,770.00 as compared to said $188,501.20. Consequently, the appellee was not entitled to an injunction if such preferred stock was taxable. The only question, therefore, involved on this appeal is whether the Act of Congress of March 20th, 1936, Title 12, U. S. C. A., 51 (d) (Finding XXXIX) voided the taxes for 1935 on such preferred stock.

II.

Said Act of Congress in so far as it purports to operate retroactively to destroy the tax levied pursuant to the statutes of the State of Arizona for the year 1935 upon the preferred stock of the appellee held by the Reconstruction Finance Corporation is unconstitutional and should be ignored by the courts because the tax for that year had, upon the effective date of said Act, become a fixed, valid [298] lien, payable and to the extent of one-half thereof delinquent, by virtue of the statutes of the State of Arizona (Finding XXIX) and was protected by:

(a) The due process clause of the Fifth Amendment to the Constitution of the United States;

(b) The reservation and protection of sovereign powers of states by the Tenth Amendment to the Constitution of the United States.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona
LESLIE C. HARDY
Deputy County Attorney, Maricopa County, Arizona
Court House, Phoenix, Arizona
Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

J. MERCER JOHNSON
County Attorney of Pima
County, Arizona
Court House, Tucson, Arizona

[299]

CONNER & JONES,
By GERALD JONES
Special Attorneys for Pima
County, Arizona
303-6 Valley National Building,
Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and ExOfficio Tax Collector of Pima County, Arizona; Charles M. Taylor as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [300]

[Title of District Court and Cause—E-350.]

STATEMENT OF POINTS BY MARICOPA COUNTY AND OFFICIALS THEREOF upon which they rely for a reversal of the judgment: [301]

I.

There is no finding by the Court or contention by appellee that the preferred stock of the appellee held by the Reconstruction Finance Corporation was excessively valued for the year 1936. It had been purchased by the Reconstruction Finance Corporation at a price equal to its par value in February, 1935, to-wit: $1,200,000.00, and was valued for 1936 at 75% of that sum (Findings VI, XIV, XXVIII). The only question involved on this appeal is whether the Act of Congress of March 20th, 1936, Title 12, U. S. C. A. 51 (d) (Finding XL) voided the taxes for 1936 on such preferred stock.

II.

Said Act of Congress in so far as it purports to operate retroactively to destroy the tax levied pursuant to the statutes of the State of Arizona for the year 1936 upon the preferred stock of the appellee held by the Reconstruction Finance Corporation is unconstitutional and should be ignored by the courts because the tax for that year had upon the effective date of said Act become a fixed, valid lien by virtue of the statutes of the State of Arizona (Finding XXX) and was protected by:

(a) The due process clause of the Fifth Amendment to the Constitution of the United States;

(b) The reservation and protection of sovereign powers of states by the Tenth Amendment to the Constitution of the United States.

RICHARD F. HARLESS
County Attorney of Maricopa
County, Arizona
Court House, Phoenix, Arizona

[302]

LESLIE C. HARDY
Deputy County Attorney,
Maricopa County, Arizona
Court House, Phoenix, Arizona
Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

J. MERCER JOHNSON
County Attorney of Pima
County, Arizona
Court House, Tucson, Arizona

CONNER & JONES,

By GERALD JONES

Special Attorneys for Pima County, Arizona

303-6 Valley National Building,

Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin and J. B. Mead, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [303]

[Title of District Court and Cause—E-350.]

STATEMENT OF POINTS BY PIMA COUNTY AND OFFICIALS THEREOF

upon which they rely for a reversal of the judgment: [304]

I.

While the situation in Pima County is factually somewhat different from that of Maricopa County, the case of the appellee as found by the Court is in effect the same, being based on the finding that the tax levied by Pima County in 1936 to the extent of $78,665.08 (Finding XVI) is in reality a tax upon the preferred stock of appellee held by the Reconstruction Finance Corporation (Finding XVI and XXVIII). The question involved on this appeal is whether the Act of Congress of March 20th, 1936, Title 12, U. S. C. A., 51 (d) (Finding XXXIX) voided the taxes for 1936 on such preferred stock.

II.

Said Act of Congress in so far as it purports to operate retroactively to destroy the tax levied pursuant to the statutes of the State of Arizona for the year 1936 upon the preferred stock of the appellee held by the Reconstruction Finance Corporation is unconstitutional and should be ignored by the courts because the tax for that year had, upon the effective date of said Act, become a fixed, valid lien by virtue of the statutes of the State of Arizona (Finding XXX) and was protected by:

(a) The due process clause of the Fifth Amendment to the Constitution of the United States;

(b) The reservation and protection of sovereign powers of states by the Tenth Amendment to the Constitution of the United States.

RICHARD F. HARLESS
County Attorney of Maricopa
County, Arizona
Court House, Phoenix, Arizona

[305]

LESLIE C. HARDY
Deputy County Attorney,
Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

J. MERCER JOHNSON
County Attorney of Pima
County, Arizona
Court House, Tucson, Arizona

CONNER & JONES
By GERALD JONES
Special Attorneys for Pima County, Arizona
303-6 Valley National Building, Tucson, Arizona.
Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [306]

[Title of District Court and Cause—E-333.]

DESIGNATION OF PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN RECORD ON APPEAL.

Come now the above named defendants and appellants and designate the following portions of the

record, proceed- [307] ings and evidence to be contained in the record on appeal:

1. Second Amended and Supplemental Bill of Complaint
2. Joint and Several Answers of Defendants to Second Amended and Supplemental Bill of Complaint
3. Findings of Fact and Conclusions of Law
4. Judgment Enjoining Collection of Taxes
5. Minute Entries as follows:

All minute entries of October 23, 1935
Minute entry of November 4, 1935, insofar as it relates to the defendant Maricopa County
Minute entry of November 4, 1935, insofar as it relates to the defendant Pima County
Minute entry of March 16, 1936
Minute entry of March 23, 1936
Minute entry of March 26, 1936
Both minute entries of June 19, 1936
Minute entries of November 4, 1936, insofar as they affect Maricopa and Pima Counties
Both minute entries of December 8, 1936
Minute entry of February 19, 1937
Minute entry of March 26, 1937
Minute entry of June 1, 1938
Minute entry of March 30, 1939
Minute entry of April 1, 1939
Minute entry of April 24, 1939
Minute entry of December 28, 1939
Minute entry of September 24, 1940
Minute entry of November 29, 1940

All minute entries of June 23, 1941
Both minute entries of June 26, 1941 [308]
Both minute entries of September 13, 1941
Minute entry of September 15, 1941
All minute entries of October 8, 1941

6. Notice of Appeal
7. Appeal Bond
8. This Designation.
9. Statement of Points by Maricopa County and appellants who are public officials thereof
10. Statement of Points by Pima County and appellants who are public officials thereof.

Dated this 22d day of December, 1941.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona

LESLIE C. HARDY
Deputy County Attorney,
Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona

J. MERCER JOHNSON
County Attorney, Pima County, Arizona
Court House, Tucson, Arizona

CONNER & JONES

By GERALD JONES
Special Attorneys for Pima County, Arizona
303-6 Valley National Building, Tucson, Arizona. [309]

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

[Endorsed]: Received copy this 22d day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By: Gwen J. Ballard, Deputy Clerk. [310]

[Title of District Court and Cause—E-350.]

DESIGNATION OF PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN RECORD ON APPEAL

Come now the above named defendants and appellants and designate the following portions of the record, proceed- [311] ings and evidence to be contained in the record on appeal:

1. Amended and Supplemental Bill of Complaint;
2. Joint and Several Answers of Defendants to Amended and Supplemental Bill of Complaint;
3. Findings of Fact and Conclusions of Law;
4. Judgment Enjoining Collection of Taxes;
5. Minute Entries as follows:

All minute entries of October 31, 1936
Minute entry of December 7, 1936
Both minute entries of December 8, 1936
Minute entries of December 14, 1936, relating to Maricopa County and Pima County
Minute entry February 19, 1937
Minute entry of April 15, 1937
Minute entry of June 1, 1938
Minute entry of March 30, 1939
Minute entry of April 1, 1939
All minute entries of April 24, 1939
Minute entry of December 28, 1939
Minute entry of September 24, 1940
Minute entry of November 29, 1940

Minute entry of March 22, 1941
Minute entry of June 13, 1941
Both minute entries of June 26, 1941
All minute entries of September 13, 1941
All minute entries of October 8, 1941

6. Notice of Appeal;
7. Appeal Bond;
8. This Designation;
9. Statements of Points by Maricopa County and appellants who are public officials thereof; [312]
10. Statement of Points by Pima County and appellants who are public officials thereof.

Dated this 22d day of December, 1941.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona.
Court House, Phoenix, Arizona

LESLIE C. HARDY
Deputy County Attorney, Maricopa County, Arizona
Court House, Phoenix, Arizona
Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona

J. MERCER JOHNSON
County Attorney, Pima County, Arizona
Court House, Tucson, Arizona

CONNER & JONES
By GERALD JONES
Special Attorneys for Pima County, Arizona,
303-6 Valley National Building,
Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona. [313]

[Endorsed]: Received copy this 22nd day of December, 1941. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 22, 1941. Edward W. Scruggs, Clerk, United States District Court for the District of Arizona. By Gwen J. Ballard, Deputy Clerk. [314]

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD

United States of America,
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the cases of The Valley National Bank of Phoenix, Plaintiff, versus Maricopa County, Arizona, et al, Defendants, numbered E-333 Phoenix and E-350 Phoenix, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 315, inclusive, contain a full, true and correct transcript of the proceedings of said causes and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in Appellants' Designations of Contents of Record on Appeal, filed in said causes and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid, with the exception that where certain minute entries called for in said Designations are not included in said transcript, I find no such minute entries among the records of my office.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of

record amounts to the sum of $61.30 and said sum has been paid to me by counsel for the appellants.

Witness my hand and the seal of said Court this 14th day of January, 1942.

(Seal) EDWARD W. SCRUGGS,
Clerk,
By WM. H. LOVELESS,
Chief Deputy Clerk. [315]

[Endorsed]: No. 10025. United States Circuit Court of Appeals for the Ninth Circuit. Maricopa County, Arizona, W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; Pima County, Arizona, Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona, Charles M. Taylor, as County Assessor of Pima County, Arizona, Thomas Collins, R. H. Martin, and J. B. Mead, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona, Appellants, vs. The Valley National Bank of Phoenix, a corporation, Appellee. Transcript of Record. Upon Appeals from the Dis-

trict Court of the United States for the District of Arizona.

Filed: January 17, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10025

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Appellants,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX,

Appellee.

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY ON THIS APPEAL AND DESIGNATION OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF PURSUANT TO SUB. 6, RULE 19

Appellants herein, all of whom appeal to this Court from the judgment entered on October 8, 1941, in the United States District Court for the District of Arizona, at Phoenix in said district, in suit No. E-333, adopt as the Statements of Points on this appeal the Statements of Points filed in the United States District Court which appear at pages Nos. 294 to 300, both inclusive, of the Transcript of Record prepared and transmitted to this Court by the Clerk of said United States District Court.

Appellants designate the entire Transcript of Record prepared and transmitted to this court by the Clerk of the United States District Court as the record necessary for the consideration of this appeal, and they respectfully request the Clerk of this Court to print the whole of such record.

Dated this 14th day of January, 1942.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona

LESLIE C. HARDY,
Deputy County Attorney, Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

J. MERCER JOHNSON,
County Attorney of Pima County, Arizona
Court House, Tucson, Arizona
CONNER & JONES
By GERALD JONES
Special Attorneys for Pima County, Arizona:
303-6 Valley National Building
Tucson, Arizona

Attorneys for Pima County, Arizona; Wallace S. Bransford, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; Charles M. Taylor, as County Assessor of Pima County, Arizona; Thomas Collins, R. H. Martin, and J. B. Mead, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

Service of the foregoing acknowledged this 14th day of January, 1942.

GUST, ROSENFELD, DIVELBESS, ROBINETTE & COOLIDGE
Attorneys for Appellee

[Endorsed]: Filed Jan. 17, 1942.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY ON THIS APPEAL AND DESIGNATION OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF PURSUANT TO SUB. 6, RULE 19

Appellants herein, all of whom appeal to this Court from the judgment entered on October 8, 1941, in the United States District Court for the District of Arizona, at Phoenix in said district, in suit No. E-350, adopt as the Statements of Points on this appeal the Statements of Points filed in the United States District Court which appear at pages Nos. 301 to 306, both inclusive, of the Transcript of Record prepared and transmitted to this Court by the Clerk of said United States District Court.

Appellants designate the entire Transcript of Record prepared and transmitted to this court by the Clerk of the United States District Court as the record necessary for the consideration of this

appeal, and they respectfully request the Clerk of this Court to print the whole of such record.

Dated this 14th day of January, 1942.

RICHARD F. HARLESS
County Attorney of Maricopa County, Arizona
Court House, Phoenix, Arizona

LESLIE C. HARDY
Deputy County Attorney, Maricopa County, Arizona
Court House, Phoenix, Arizona

Attorneys for Maricopa County, Arizona; W. H. Linville, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. Brush, as County Assessor of Maricopa County, Arizona; Charles H. Fields, John A. Foote and George Frye, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona.

J. MERCER JOHNSON
County Attorney of Pima County, Arizona
Court House, Tucson, Arizona

CONNER & JONES
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Service of the foregoing acknowledged this 14th day of January, 1942.

GUST, ROSENFELD, DIVELBESS,
ROBINETTE & COOLIDGE
Attorneys for Appellee

[Endorsed]: Filed Jan. 17, 1942.

No. 10025

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

MARICOPA COUNTY, Arizona, W. H. LINVILLE, as County Treasurer and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as Members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, Arizona, WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona, CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona, THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Appellants,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a corporation,

Appellee.

Upon Appeals from the District Court of the United States for the District of Arizona.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, May 18, 1942.

Before: Garrecht, Mathews and Haney, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered appeals herein argued by Mr. Leslie C. Hardy, Deputy County Attorney, counsel for appellants, Maricopa County, et al., and by Mr. Gerald Jones, counsel for appellants, Pima County, et al., and by Mr. John L. Gust, counsel for appellee, and submitted to the court for consideration and decision, with leave to counsel for appellants to file further brief in 10 days.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10025

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer, and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as Members of and Constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Appellants,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX,

Appellee.

CONSOLIDATED APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

STIPULATION

At the argument of the above entitled consolidated appeals, the court suggested that the record brought up to the Circuit Court of Appeals might present a question of jurisdiction under the Act of Congress of August 21, 1937, inasmuch as the Second Amended and Supplemental Bill of Complaint in Case No. E-333, and the Amended and Supplemental Bill of Complaint in Case No. E-350, were not filed until after the passage of the above act, and the court indicated that counsel might desire to file an additional showing with respect to this question.

In accordance with said suggestion, counsel for both parties have examined the Amended and Supplemental Bill of Complaint in Case No. E-333, which was presented to the court on the 26th day of March, 1936, and was permitted to be filed by the court by minute entry of June 19, 1936, (Trans. page 7) and motion to dismiss which was argued December 14, 1936, and denied on February 19, 1937. (Trans. pages 15 and 16). Counsel find that said Amended and Supplemental Bill of Complaint above mentioned contained all material allegations of fact and made all of the material contentions thereafter made in the Second Amended and Supplemental Bill of Complaint, upon which the case was tried.

That plaintiff's reliance upon the Act of Con-

gress of March 20, 1936, which act presents the question to be determined by this court as set forth in Paragraph XXXIX of the Second Amended and Supplemental Bill of Complaint, (Trans. pages 75-80) was contained verbatim, with the omissions hereinafter noted, in the Amended and Supplemental Bill of Complaint presented to the court on March 26, 1936, and permitted to be filed by minute entry of June 19, 1936, (Trans. page 7) and against which motion to dismiss was argued December 14, 1936, and denied February 19, 1937, (Trans. pages 15 and 16), all prior to the passage of the Act of August 21, 1937. The following words, on pages 76 and 77 of the Transcript of Record, found in Paragraph XXXIX of said Second Amended and Supplemental Bill of Complaint, were not contained in the amended complaint above mentioned, to-wit:

On page 76, Transcript:

> "That plaintiff, in said original complaint, further claimed immunity from such taxation under the exemptions granted to said property by Section 2 of Article IX of the Arizona Constitution, hereinbefore set forth, and likewise claimed that the taxes sought to be enjoined by it in said original complaint were illegal and void because of discrimination against it, made by the assessing officers, in violation of the Constitution of Arizona, and the Act of Congress permitting and limiting the taxation of shares of stock of national banks".

On page 77, Transcript:

> "That while said original complaint remained pending on plaintiff's claim of the exemption of the taxes sought to be enjoined under Section 2 of Article IX of the State Constitution, and plaintiff's claim of discriminatory assessment violating the Constitution of the State of Arizona, and plaintiff's claim of the violation of the Acts of Congress permitting and limiting the assessment of shares of stock of national banks".

As above stated, with the two exceptions above quoted, Paragraph XXXIX of the Second Amended and Supplemental Bill of Complaint is in all respects identical with Paragraph XXXIV of the Amended and Supplemental Bill of Complaint presented and filed prior to the passage of the Act of August 21, 1937.

Counsel for both parties have also examined the original complaint in Case No. E-350, filed on or about October 31, 1936, motion to dismiss which was argued December 14, 1936, and denied on February 19, 1937. (Trans. pages 15 and 16). Counsel find that said original bill of complaint above mentioned, contained all material allegations of fact, and made all of the material contentions thereafter made in the Amended and Supplemental Bill of Complaint upon which the case was tried. That said original Bill of Complaint, filed on or about October 31, 1936, expressly claimed a violation by the defendants of Act of March 20, 1936. That Paragraph

XXXIX of said original Bill of Complaint was in all respects identical with Paragraph XXXIX of the Amended and Supplemental Bill of Complaint upon which the case was tried, which was filed April 24, 1939, with the exception that there was omitted in said original complaint, the following paragraph, which is found on pages 145 and 146 of the transcript of Record, to-wit:

> "That if it be held that any of the taxes sought to be (123) enjoined herein are not levied or imposed upon plaintiff's shares of preferred stock, plaintiff alleges that the taxing officials and state Board of Equalization of the State of Arizona have intentionally imposed taxes upon its shares of common stock at a greater rate than they have imposed taxes upon the shares of stock of all other banks, state and national, in the state of Arizona, in violation of Section 1 of Article IX of the Constitution of Arizona, prohibiting discrimination in assessment of taxes upon the same class of property, and also in violation of Section 548, Title 12, U. S. Code Ann., providing that shares of stock in national banks shall not be taxed at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the state, coming into competition with the business of national banks."

That the Second Amended and Supplemental Bill of Complaint in Case No. E-333, and the Amended and Supplemental Bill of Complaint in Case No.

E-350, filed on April 24, 1939, were filed primarily to renew plaintiff's claim for temporary injunction on account of the threat made by the defendants to sell plaintiff's shares of stock, made by the defendants primarily with the object of securing a three judge Court. However, in preparing said amended Bills of Complaint, the plaintiff did review the then existing complaints in both cases, and did make certain changes in the language in each of said complaints, but made no allegation of fact and advanced no legal contention which had not been asserted prior to the passage of the Act of Congress of August 21, 1937.

That if the court deems it necessary to pass upon any questions presented by the record in this case, the complaints in said cases filed prior to the passage of the Act of August 21, 1937, be considered, counsel for both sides hereby request that an order be entered directing such additional portions of the record as the court may deem proper to be brought up to the Circuit Court of Appeals.

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LESLIE C. HARDY
Deputy County Attorney, Phoenix, Ariz.

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WILLIAM C. FITTS
Washington, D. C.
Of Counsel.

[Endorsed]: Filed May 23, 1942.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, August 7, 1942.

Before: Garrecht, Mathews and Haney, Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREE.

By direction of the Court, Ordered that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Appeal from the District Court of the United States for the District of Arizona.

OPINION

Before Garrecht, Mathews and Haney, Circuit Judges.

Mathews, Circuit Judge:

In two suits (Nos. 333 and 350) brought by appellee, a national banking association, against Maricopa County, Arizona, Pima County, Arizona, and

the county treasurer, the county assessor and the members of the board of supervisors of each of said counties,[1] appellee obtained judgments enjoining appellants from collecting State, county, municipal and school district taxes on shares of preferred stock of appellee owned by Reconstruction Finance Corporation. Appellants seek reversal.

Suit No. 333, commenced on October 23, 1935, involved taxes for 1935 aggregating $43,598.45,[2] of which Maricopa County and its officers sought to collect $31,872.77 and Pima County and its officers sought to collect $11,725.68. Suit No. 350, commenced on October 31, 1936, involved taxes for 1936 aggregating $45,075.40,[3] of which Maricopa County and its officers sought to collect $29,927.88 and Pima County and its officers sought to collect $15,147.52. All the taxes involved were on the same shares—198,400 shares of preferred stock issued by appellee on February 11, 1935, pursuant to §301 of the Act of March 9, 1933, c. 4, 48 Stat. 5, as amended by the Act of June 15, 1933, c. 79, 48 Stat. 147, 12 U. S. C. A. §51a, and acquired by Reconstruction Finance Corporation on February 11, 1935, pursuant to §304

[1] Other counties and county officers were joined as defendants, but have not appealed. For present purposes, therefore, Maricopa County and its officers and Pima County and its officers may be regarded as the only defendants in these suits.

[2] Exclusive of taxes sought to be collected in counties other than Maricopa and Pima.

[3] Exclusive of taxes sought to be collected in counties other than Maricopa and Pima.

of said Act of March 9, 1933, as amended by §2 of the Act of March 24, 1933, c. 8, 48 Stat. 20, 12 U. S. C. A. §51d.

Until March 9, 1933, national banking associations were not empowered to issue preferred shares. They were, however, empowered to issue shares of common stock, and Congress, by §5219 of the Revised Statutes, 12 U. S. C. A. §548, had consented to the imposition of State taxes thereon, subject to the conditions prescribed in §5219. Whether such consent should be construed to embrace preferred shares issued pursuant to §301, supra, and acquired by Reconstruction Finance Corporation pursuant to §304, supra, was a debatable—and much debated—question until February 3, 1936, when the Supreme Court, in Baltimore National Bank v. State Tax Commission, 297 U. S. 209, decided that it should be so construed. Thereupon Congress, by §1 of the Act of March 20, 1936, c. 160, 49 Stat. 1185, amended §304 by adding thereto the following provision:

> "Notwithstanding any other provision of law or any privilege or consent to tax expressly or impliedly granted thereby, the shares of preferred stock of national banking associations * * * acquired before or after March 20, 1936, by Reconstruction Finance Corporation * * * shall not, so long as Reconstruction Finance Corporation shall continue to own the same, be subject to any taxation * * * by any State, county, municipality, or local taxing authority, whether imposed, levied, or assessed on, before

> or after March 20, 1936, and whether for a past, present, or future taxing period."

Applying this provision, the court below held that the shares here involved were not subject to taxation, and that, therefore, the taxes here involved were illegal and void. Appellants contend that the provision was inapplicable for the following reasons:

The taxes involved in suit No. 333 were levied and assessed before the date (March 20, 1936) on which the above quoted provision was enacted and were for a taxing period (the calendar year 1935) which commenced and ended before March 20, 1936. The taxes involved in suit No. 350 were for a taxing period (the calendar year 1936) which commenced before March 20, 1936. All the taxes involved were levied under the authority of chapter 75 (§§3056-3192) of the Revised Code of Arizona, 1928, of which §3101, as amended by §1 of chapter 106, Session Laws of Arizona, 1931, provided:

> "Every tax levied under the authority of this chapter upon real or personal property shall be a lien upon the property assessed. The lien shall attach on the first Monday in January in each year, and shall not be satisfied or removed until such taxes, penalties, charges and interest are all paid, or the property has finally vested in a purchaser under a sale for taxes. * * *"

Therefore appellants say that the 1935 taxes here involved became a lien upon the assessed property (appellee's preferred stock) on the first Monday in

January, 1935, and that the 1936 taxes here involved became a lien upon the assessed property on the first Monday in January, 1936. Thus, appellants say, the lien of all the taxes had attached before the enactment of the above quoted provision of §304.[4] That fact—assuming it to be a fact—did not, however, render the provision inapplicable; for, by its terms, the provision applies to all taxation of preferred stock of national banking associations owned by Reconstruction Finance Corporation, "whether imposed, levied, or assessed on, before or after March 20, 1936, and whether for a past, present, or future taxing period."

Appellants contend that, in so far as it applies to the taxes here involved, the provision is unconstitutional in that, by destroying the lien of and right to collect these taxes, it deprives the State of Arizona and its political subdivisions of their property without due process of law, in violation of the Fifth Amendment. Appellants further contend that the lien of and right to collect these taxes were acquired through the exercise of the State's reserved powers. Therefore they contend that, in destroying said lien and right, the provision violates the Tenth Amendment. These contentions are rejected for the following reasons:

Among the powers which the Constitution delegates to the United States is the power to create

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[4]This provision, which §1 of the Act of March 20, 1936, added to §304 of the Act of March 9, 1933, is spoken of in the briefs as the Act of March 20, 1936.

Federal instrumentalities such as national banking associations and to exempt such instrumentalities, their shares and shareholders from taxation. McCulloch v. Maryland, 4 Wheat. 316, 400-437; Osborn v. Bank of the United States, 9 Wheat. 738, 859-871; Van Allen v. Assessors, 3 Wall. 573, 581-588; Bradley v. Illinois, 4 Wall. 459; People v. Weaver, 100 U.S. 539, 543; Owensboro National Bank v. Owensboro, 173 U.S. 664, 667-669; Bank of California v. Richardson, 248 U.S. 476, 482-484; Smith v. Kansas City Title Co., 255 U.S. 180, 208-213; First National Bank v. Adams, 258 U.S. 362, 364; Federal Land Bank v. Crosland, 261 U.S. 374, 377; Des Moines National Bank v. Fairweather, 263 U.S. 103, 106; First National Bank v. Anderson, 269 U.S. 341, 347; First National Bank v. Hartford, 273 U.S. 548; Pittman v. Home Owners' Loan Corp., 308 U.S. 21, 32; Federal Land Bank v. Bismarck Lumber Co., 314 U.S. 95, 102.

No power to tax shares of stock of national banking associations is reserved to the States by the Constitution. Their power to tax such shares exists only by consent of Congress. Van Allen v. Assessors, supra; Bradley v. Illinois, supra; People v. Weaver, supra; Owensboro National Bank v. Owensboro, supra; Bank of California v. Richardson, supra; First National Bank v. Adams, supra; Des Moines National Bank v. Fairweather, supra; First National Bank v. Anderson, supra; First National Bank v. Hartford, supra. Without such consent, no such tax can be imposed, levied, assessed

or collected by or under the authority of any State.

By such consent, a privilege is conferred—the privilege of taxing shares of stock of national banking associations. For this privilege nothing is given by the States or received by the United States. It is a mere bounty, a pure gratuity, and hence can be withdrawn by Congress at any time. Reconstruction Finance Corporation v. Elder, D.C.N.D. Ga., 26 F. Supp. 772. In so far as it relates to preferred shares owned by Reconstruction Finance Corporation, the privilege was withdrawn by the enactment of the above quoted provision of § 304 on March 20, 1936. Thereby the collection of taxes on such shares, "whether imposed, levied, or assessed on, before or after March 20, 1936, and whether for a past, present, or future taxing period," is prohibited.

The prohibition is valid as to all such taxes, including those levided and assessed before March 20, 1936, for a period which ended before March 20, 1936, those levied and assessed after March 20, 1936, for a period which commenced before March 20, 1936, and those which, by State law, became a lien before March 20, 1936; for, regardless of when or for what period they were levied or assessed or when, if at all, they became a lien, there is and can be no vested right to collect such taxes. Reconstruction Finance Corporation v. Elder, supra.

Judgments affirmed.

[Endorsed]: Opinion. Filed Aug. 7, 1942. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 10025

MARICOPA COUNTY, Arizona, et al., and PIMA COUNTY, Arizona, et al.,

Appellants,

vs.

VALLEY NATIONAL BANK OF PHOENIX,

Appellee.

DECREE

Appeal from the District Court of the United States for the District of Arizona.

This Cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Arizona, and was duly submitted:

On Consideration Whereof, it is now here ordered, adjudged, and decreed by this Court, that the judgments of the said District Court in this cause be, and hereby are affirmed with costs in favor of the appellee and against the appellants.

It Is Further Ordered, Adjudged, and Decreed by this Court, that the appellee recover against the appellants for its costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered Aug. 7, 1942.

United States Circuit Court of Appeals
for the Ninth Circuit

MARICOPA COUNTY, ARIZONA, et al.,
Appellants,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX,
Appellee.

ORDER STAYING ISSUANCE OF MANDATE

Upon application of Messrs. Richard F. Harless, County Attorney, of Maricopa County, and J. Mercer Johnson, County Attorney, of Pima County, counsel for the appellants, and good cause therefor appearing, It Is Ordered that the issuance, under Rule 28, of the mandate of this Court in the above cause be, and hereby is stayed to and including October 15, 1942; and in the event the petition for a writ of certiorari to be made by the appellants herein be docketed in the Clerk's office of the Supreme Court of the United States on or before said date, then the mandate of this Court is to be stayed until after the said Supreme Court passes upon the said petition.

Dated: San Francisco, California, September 3, 1942.

CLIFTON MATHEWS,
United States Circuit Judge.

[Endorsed]: Filed Sep. 3, 1942. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing three hundred eighty-nine (389) pages, numbered from and including 1 to and including 389, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellants, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 10th day of September, 1942.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—November 16, 1942

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. Counsel are asked to discuss in their briefs and on the oral argument the question whether petitioners, who are counties, are within the constitutional protection which they assert.

In view of the Act of August 24, 1937, 28 U. S. C. section 401, the Court hereby certifies to the Attorney General of the United States that the constitutionality of the Act of March 20, 1936, as applied, is drawn in question in this case.

It is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

No. 449

Office Supreme Court U. S.
FILED
OCT 8
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1932

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer, and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a national banking association,

Respondent.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

PETITION FOR WRIT OF CERTIORARI AND SUPPORTING BRIEF

REPUBLIC AND GAZETTE COMMERCIAL PRINTERY, PHOENIX, ARIZONA

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COUNSEL FOR RESPONDENT

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In the Supreme Court of the United States

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer, and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a national banking association,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUT COURT OF APPEALS FOR THE NINTH CIRCUIT

TO THE HONORABLE CHIEF JUSTICE, AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioners named in the caption above, and each of them, respectfully pray for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit to review the decision and decree of that

court rendered August 7, 1942, affirming the judgments of the United States District Court for the District of Arizona in two suits in equity catalogued in that court as No. E-333 and No. E-350 (R. 17, 86).

OPINION OF THE APPELLATE COURT

The Circuit Court of Appeals for the Ninth Circuit rendered an opinion but it has not been reported. It appears in the Transcript of Record beginning at page 381.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

This court has jurisdiction to review the decision and judgment of the Circuit Court of Appeals under Sec. 240(a) of the Judicial Code. (28 U.S.C., Sec. 347(a)).*

The date of the decision and decree of the Circuit Court of Appeals sought to be reviewed is August 7, 1942 (R. 381, 388).

An order was made by the Circuit Court of Appeals on the 3rd day of September, 1942, staying issuance of mandate to and including the 15th day of October, 1942, conditioned upon the filing of this petition in this court within the date last mentoned (R. 389).

CONSTITUTION AND STATUTES INVOLVED

The statute involved is that part of the Act of Congress of March 20, 1936, c. 160, 49 Stat. 1185, Title 12, Sec. 51(d) U.S.C. which provides as follows:

*This section is printed in the Appendix at page 1.

"Notwithstanding any other provision of law or any privilege or consent to tax expressly or impliedly granted thereby, the shares of preferred stock of national banking associations, and the shares of preferred stock, capital notes, and debentures of State banks and trust companies, acquired before or after March 20, 1936, by Reconstruction Finance Corporation, and the dividends or interest derived therefrom by the Reconstruction Finance Corporation, shall not, so long as Reconstruction Finance Corporation shall continue to own the same, be subject to any taxation by the United States, by any Territory, dependency, or possession thereof, or the District of Columbia, or by any State, county, municipality, or local taxing authority, whether imposed, levied, or assessed on, before or after March 20, 1936, and whether for a past, present, or future taxing period."

The provisions of the Constitution of the United States involved are:

Fifth Amendment to the Constitution of the United States, and

Tenth Amendment to the Constitution of the United States.*

SUMMARY STATEMENT OF MATTER INVOLVED

These consolidated suits were for injunctions to restrain the collection of state, county, school district and municipal taxes for the years 1935 and 1936 filed in the District Court of the United States for the District of Arizona on the jurisdictional claim that the suits arose under the constitution and laws of the United States, Sec. 24 of the Judicial Code, as amended, Title 28, U.S.C., Sec. 41** (R. 23, 92).

*These amendments are printed in the Appendix at page 1.

**This section is printed in the Appendix at page 2.

The two cases were consolidated for trial and appeal (R. 188), and the appeal from the judgments granting the injunctions was heard as a single cause by the United States Circuit Court of Appeals for the Ninth Circuit, No. 10025.

Two of the counties involved, Maricopa and Pima, and their county officers (the amount involved as to the other counties being insignificant) prosecuted their appeal to the Circuit Court of Appeals pursuant to Sec. 128(a) of the Judicial Code as amended (Title 28, U.S.C., Sec. 225)*, inasmuch as no direct appeal lay to this court from the judgment. See:

> *Ex Parte Bransford*, 310 U.S. 354, 84 L. Ed. 1249, 60 Sup. Ct. Rep. 947,

where the County Treasurer of Pima County sought a writ of mandamus from this Court to the District Court to require that a special court of three judges be convened for consideration of these suits under Sec. 266 of the Judicial Code, 28 U.S.C., Sec. 380, the decision going against the application.

Respondent, The Valley National Bank of Phoenix, is incorporated as a national banking association under the laws of the United States, and has its principal banking house in Maricopa County, Arizona and a branch in Pima County, Arizona. (R. 18).

Congress has authorized the several states to tax the shares of capital stock of national banking associations by R.S. Sec. 5219, 42 Stat. 1499, 44 Stat. 223, Title 12, Sec. 548, U.S.C.**

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*This section is printed in the Appendix at page 2.

**This section is printed in the Appendix beginning at page 3.

Sections 3069, 3070 and 3071, Revised Code of Arizona, as amended by Chap. 110, Session Laws 1931, provide the method for assessing and taxing shares of capital stock of banks doing business in the State of Arizona, including national banks. (R. 25, 28 incl.).*

In order to provide sufficient capital to enable appellee to comply with the laws and regulations pertaining to national banks in the acquisition and the transaction of the banking business which it acquired on February 11, 1935, Reconstruction Finance Corporation of the United States of America purchased from appellee preferred capital stock of the par value of $1,240,000. (R. 28, 29).

The County Assessor of Maricopa County, one of the petitioners herein, in calculating the tax upon respondent's shares of stock for the year 1935, included the sum of $1,240,000 which is the par value of respondent's preferred stock owned by Reconstruction Finance Corporation. (R. 33, 34).

Pima County, one of the petitioners herein, likewise calculated a tax for the year 1935 upon $400,000 of the $1,240,000 of respondent's preferred capital stock which Reconstruction Finance Corporation had acquired. (R. 37).

Similar taxes were levied for the year 1936. (R. 104 to 107 incl.).

Under the laws of Arizona the lien of taxes upon real and personal property attaches on the first Monday of January of each year. (Sec. 3101 Revised Code of Arizona, 1928).**

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*These sections are printed in the Appendix beginning at page 7.

**This section is printed in the Appendix beginning at page 13.

Under Section 3074, Revised Code of Arizona, 1928, assessments of personal property are made by the County Assessor between the first Monday in January and the first Monday in May of each year.* Thus the assessment of the preferred capital stock was made for the year 1935 prior to the effective date of the Act of March 20, 1936, supra. While the assessment of the preferred capital stock for the year 1936 could have been made between March 20, 1936, (the effective date of the Act of Congress of March 20, 1936) and the first Monday of May in that year, nevertheless the lien of the tax for that year became impressed, as we have shown, on the first day of January of 1936. The Congress, by the passage of the Act of March 20, 1936, sought retroactively to intercept and destroy the taxes and the lien of the taxes for those years.

The suits were filed by respondent, as the bills of complaint will disclose (R. 17, 86), to enjoin the defendants from collecting the taxes for the years 1935 and 1936 levied upon this preferred stock, and by the bills respondent asserted that the waiver of exemption from taxation of property owned and held by an instrumentality of the United States, such as preferred capital stock of national banks owned by Reconstruction Finance Corporation, can be granted or withheld at the pleasure of Congress, and that when the privilege theretofore extended to the several states, counties and municipalities thereof, to tax such shares of preferred stock owned by an instrumentality of the United States was withdrawn by Congress, both as to taxes theretofore and thereafter levied, such withdrawal prevented the payment of such taxes by respondent or the Reconstruction Finance Corporation (R. 78, 79, 80).

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*Section 3074 is printed in the Appendix beginning at page 10.

Serious contention had been made that the states were without authority to tax the capital stock of national banks owned by Reconstruction Finance Corporation, and that contention found its way into this court where it was finally determined on February 3, 1936, that Congress had consented to the taxation of such stock by the states.

Baltimore National Bank vs. State Tax Commission, 297 U. S. 209, 56 Sup. Ct. Rep. 417, 80 L. Ed. 586.

Within a short time after the date of the rendition of the decision of this court in the case last mentioned, Congress enacted the Act of March 20, 1936, page 3, supra, which retrospectively seeks to invalidate taxes levied previous thereto by the states, including the tax here involved, upon the preferred capital stock of national banks owned by Reconstruction Finance Corporation.

Petitioners contended in the District Court, and in the Circuit Court of Appeals, that until the enactment of March 20, 1936, respondent's preferred stock was taxable by the State of Arizona, and that the Act of March 20, 1936, which purports to destroy that tax, is unconstitutional and void in that it deprives the State of Arizona, and the counties and school districts thereof, of their property without due process of law contrary to the Fifth Amendment to the Constitution of the United States; and that the Act of March 20, 1936, insofar as it purports to operate retrospectively upon the taxes, and the lien of taxes, here involved, and to destroy them, is an attempted exercise of a power not delegated to the United States by the Constitution of the United States, and not prohibited to the State of Arizona, and insofar as that act operates retrospective-

ly, it violates the Tenth Amendment to the Constitution of the United States; and further, that the Act of March 20, 1936, is unconstitutional and void in that the Congress was without power or authority to destroy property rights lawfully and validly accrued to the State of Arizona in the exercise of its power of taxation to raise revenues, and that the attempt to do so by that act constitutes an unwarranted invasion of the sovereign rights of the State of Arizona. (R. 167, 168, 185, 186).

The trial court made conclusions of law and found that the Act of March 20, 1936, which exempts preferred stock of national banks from taxation while owned by Reconstruction Finance Corporation, is constitutional, and that the provisions of that Act which operate retrospectively are of equal effect with those which operate prospectively. (R. 258, 325).

The judgments of the trial court in both suits decreed that only the taxes which were tendered for payment were collectible (i.e. taxes levied, less the taxes levied upon the preferred capital stock owned by Reconstruction Finance Corporation) and enjoined the collection of any taxes upon shares of the respondent's stock, both common and preferred, in excess of the amounts tendered. (R. 264, 265, 266; R. 331, 332, 333).

The judgments of the District Court, as we have said, were affirmed by the Circuit Court of Appeals (R. 388) and accordingly petitioners now seek a review by this court of the decision and judgment of the Circuit Court of Appeals.

SPECIFICATIONS OF ERROR

1. The Circuit Court of Appeals and the District Court erred in giving effect to the Act of Congress of March 20, 1936, Title 12, Sec. 51(d) U.S.C., and in

overruling the petitioners' objections to the enforcement of that Act, for the reason that the Act is in violation of the Fifth Amendment to the Constitution of the United States in this: that it deprives the State of Arizona, the counties of Maricopa and Pima, and legal subdivisions thereof, of their property without due process of law in destroying the tax, and the lien of the tax, for the years 1935 and 1936, levied and impressed upon respondent's preferred capital stock owned by Reconstruction Finance Corporation.

2. The Circuit Court of Appeals and the District Court erred in giving effect to the Act of Congress of March 20, 1936, Title 12, Sec. 51 (d), U.S.C., and in overruling the petitioners' objections to the enforcement of that Act, for the reason that the Act is in violation of the Tenth Amendment to the Constitution of the United States in this: that the taxes for the years 1935 and 1936 are a lien upon the preferred stock of the respondent owned by Reconstruction Finance Corporation by virtue of the exercise of the sovereign power of the State of Arizona as to a matter not delegated to the United States by the Constitution of the United States nor prohibited by that Constitution to the state, and since the state was protected by the Tenth Amendment in its sovereign right to lay the taxes, the Congress was without power to destroy the taxes, and the lien of the taxes, for those years.

3. The Circuit Court of Appeals and the District Court erred in holding that the consent given by Congress under Section 5219, Revised Statutes of the United States, Title 12, U.S.C., Sec. 548, if any such consent was needed, to the State of Arizona to tax the preferred stock of the respondent while owned by the Reconstruction Finance Corporation was a mere

bounty or a pure gratuity, and by holding that the Congress could withdraw the authority granted after the state had availed itself of the privilege of taxing such preferred stock, and after the lien of the taxes had become impressed and fixed thereon.

QUESTION PRESENTED

The question presented for consideration is whether Congress may constitutionally destroy state taxes, and the lien thereof, on preferred shares of capital stock of a national banking association in the ownership of Reconstruction Finance Corporation by retrospective legislation where the taxes in question were authorized by, and validly levied, under a previous Act of Congress, namely R. S. Sec. 5219, Title 12, Sec. 548, U.S.C., as construed by Baltimore National Bank vs. State Tax Commission, 297 U.S. 209, 56 Sup. Ct. Rep. 417, 80 L. Ed. 586, heretofore cited.

REASON RELIED UPON FOR THE ISSUANCE OF THE WRIT

Petitioners submit that the decision of the Circuit Court of Appeals was on an important question of federal law which has not been, but should be, settled by this court, to-wit: whether the Congress can constitutionally destroy by retrospective legislation a state tax lawful when levied, and levied with the consent of the Congress, upon the preferred capital stock of a national banking association while in the ownership of Reconstruction Finance Corporation.

WHEREFORE, the petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and to send to this court for its review and determination, on a day certain

to be therein named, the full and complete transcript of record and all the proceedings entitled as in the caption of this petition, and catalogued in the lower court as No. 10025, and that the decision and judgment of the United States Circuit Court of Appeals for the Ninth Circuit may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

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CERTIFICATE OF COUNSEL

We, the undersigned, counsel for petitioners herein, do hereby certify that the foregoing petition for writ of certiorari in our opinion is well founded and meritorious, and we do further certify that it is not interposed and filed for the purpose of delay.

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COUNSEL FOR PETITIONERS PIMA COUNTY, AND THE PUBLIC OFFICIALS OF PIMA COUNTY

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer, and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a national banking association,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

(All Specifications)

The State of Arizona is not named as a party on the record. While the state is not a necessary party, nevertheless it is a real party in interest.

The bills of complaint allege that the State Board of Equalization fixed the rate of taxes to be levied and collected within the counties for state purposes which it transmitted to the Boards of Supervisors of the several counties. (R. 50, 116, 117).

The counties are constituted agents of the state to collect taxes for the state, counties, and school districts, and a suit against the county lies to collect the whole tax.

Maricopa County vs. Hodgin, 46 Ariz. 247, 50 Pac. (2d) 15.

The prayers of the bills sought a declaration that the assessments upon the preferred capital stock for the purpose of state taxation, as well as county, school district and other local taxation, be decreed illegal and void. (R. 80, 146).

The judgments enjoined the petitioners from collecting any taxes as and for state, county, school district and other local taxes beyond those which were tendered and paid by respondent upon the shares of its common capital stock. Thus the judgments enjoined the collection of the taxes upon respondent's shares of preferred capital stock owned by Reconstruction Finance Corporation assessed not only for state purposes but also for other purposes. (R. 200, 201, 202; R. 264, 265, 266).

NATURE OF TAX IMMUNITY OF NATIONAL BANK STOCK

Conceding for the argument that states are without power to tax the shares of capital stock in a national banking association in the absence of Congressional leave (but see contrary view expressed by Marshall in the last paragraph of the leading case: McCulloch vs. Maryland, 4 Wheaton 316, 4 L. Ed. 579, and also Bank

Tax Case, 3 Wallace 573, 18 L. Ed. 229) and also that the Reconstruction Finance Corporation is a federal agency and entitled to claim exemption from state taxation of some of its property, we submit it does not follow that Congressional leave to tax such property may be withdrawn after the taxes have been assessed and levied.

The property of federal agencies such as national banks and the Reconstruction Finance Corporation is not ipso facto immune from state taxation. Where Congress is silent on the subject, the duty is imposed upon the court to determine the character of the property which the state seeks to tax and the Governmental need that such property remain free from that state taxation. This Court has held that, if the property is of such character that the state tax in no substantial way interferes with the function of the federal agency, it will not be voided. But Congress sometimes relieves the court of the duty of determining whether or not state taxation of property owned by federal agencies will offer substantial impediment in the way of that agency performing its functions, an instance being the frequently granted permission to tax real property of federal agencies, national banks, and Reconstruction Finance Corporation. Certainly, if the courts are able to say, upon a factual review, that the burden of state taxation is so slight that no real interference is effected thereby, Congress has the same privilege. In the railroad cases:

Thompson vs. Union Pacific Ry. Co., 9 Wallace 579, 76 U. S. 579, 19 L. Ed. 792,

and

Union Pacific Ry. Co. vs. Peniston, 18 Wallace 5, 21 L. Ed. 787,

this Court pointed out that the physical properties of federally incorporated railroads, agencies of the United States Government in very essential particulars (movement of troops, transmission of government messages, etc.) might nevertheless be taxed by the states, since the tax did not in truth deprive them of the power, or seriously lessen their power, to serve the Government.

As the Court in those cases, and others, declared, it is not the nature of the agency, but the character of the property belonging to the agency, and the effect of the taxation thereon, that determines whether it may be taxed by the states.

We submit that the declaration by Congress that property of federal agencies may be taxed by the state is a final and conclusive determination that the state taxation of that particular property will not interfere with the performance by that agency of its federal function. It is not only equal to a similar conclusion by this Court, which, after all, may change its mind without violating the Fifth Amendment or any other part of the Constitution, but it, when availed of by the state, gives rise to a property right as inviolate as that existing under and by virtue of any other act of Congress.

When Congress declared by Section 5219 of the Revised Statutes, Title 12 U.S.C., Section 548, supra, that all the capital stock of a national banking association was subject to state taxation, and left that statute undisturbed when it created the Reconstruction Finance Corporation and authorized the issuance of preferred stock, it must have weighed the considerations for and against the wisdom and effect of such taxation on such property and concluded that such state taxation could not in any real way prevent the performance by national banking associations and the Reconstruction

Finance Corporation of their duties—unless we are to convict Congress of authorizing such taxation in spite of a conclusion that it might interfere with the proper performance of such functons.

It may very well be that the effect of state taxation on property belonging to a federal agency so patently impairs its efficiency that a statute granting leave for such state taxation is itself void. An act of Congress permitting a state to tax an army post or federal mint or post office might be of that type. Perhaps Congress could not allow state taxation of any property belonging to the United States itself.

We have no such case. The decision of this court in the Baltimore Bank Case, supra, settled that.

RIGHT OF STATE TO TAX NOT GRATUITY

The Circuit Court of Appeals founds its opinion on the proposition that Congress was at liberty to change its mind on the state taxability of this stock; that the right to tax it was a mere bounty, a pure gratuity, withdrawable at any time, and regardless of the consequences to the states and the taxing units involved. It may not be unhelpful to a correct determination of the case to point out that if that doctrine is correct, Congress could with equal validity require the states to refund taxes long since paid and expended.

The fact that the federal government could have withheld leave to the states to tax this stock does not justify a characterization of the statute granting such leave as a bounty or gratuity on a par with pensions to veterans, etc. Our system of government is dual and necessarily co-operative and the two parts legislate with the single purpose in mind—the good of

their common citizenry. If any quid pro quo were necessary, it exists here in the fact that national banks and the Reconstruction Finance Corporation enjoy the protection and privileges afforded by the states and may look to the state courts for their enforcement. Because in those respects where, by leave from one to the other, or because of the duality of the constitutional structure, either may act, the consent by the one having the major right, exclusive if asserted, in favor of the other, is not a matter of gift but of governmental policy. See Bank Tax Case, supra.

But even if it were a gift, the rights thereunder became fixed and established. General language may be found in the pension cases:

United States vs. Teller, 107 U. S. 64, 27 L. Ed. 352;

Frisbie vs. United States, 157 U. S. 160, 39 L. Ed. 657;

as well as in:

Lynch vs. United States, 292 U. S. 571, 78 L. Ed. 1434, 54 Sup. Ct. Rep. 840,

to the effect that bounties, such as pensions, may be withdrawn by Congress at any time, as contradistinguished from contracts which are within the protection of the Constitution, but Congress has never retroactively destroyed an accrued right to a pension or other gratuity or bounty, and it is by no means conceded that it may do so. It might be added in that connection that as far as we have been able to ascertain, there never has been a bill in Congress, passing to enactment, as brazenly retroactive as this one.

STATE TAX CREATED SUBSTANTIAL PROPERTY RIGHT

Even testing the case on the theory of a relationship recognized at common law, the position of the state would appear to be stronger than that of a mere donee. It acted on the leave extended by Congress and into the tax structure went the levy on this preferred stock for the year 1935. Expenses were incurred on the basis of the levy, and it would be an onerous shifting of the burden to require other taxpayers to defray the at least once valid tax bill against this stock. Individuals could not so deal with one another without a contract being implied or an estoppel against the contrary contention arising, and if we must look to the common law to define the status, it would be nothing less than contractual.

Lynch vs. United States, supra.

The Act of Congress of March 20, 1936, in its retrospective feature, not only destroyed the tax for the year 1935 on respondent's preferred capital stock owned by Reconstruction Finance Corporation and also the lien of the tax upon that stock for both the years 1935 and 1936, but it also disarranged the budget of the state, and also the budgets of Maricopa County and Pima County and the affected school districts and other municipal corporations within those counties for the year 1935.

See: *Fullen vs. Calhoun*,
39 Ariz. 40, 3 Pac. (2d) 258.

The Governor of Arizona submits to each regular session of the Legislature of the State of Arizona a budget containing an itemized plan of proposed public expenditures. (Sec. 2611, Revised Code of Arizona

1928*). Counties, incorporated cities and towns annually budget their expenditures. (Sec. 3097, Revised Code of Arizona, 1928**). School districts likewise annually budget their expenditures.

See: *Yanke vs. School District No. 65*, 56 Ariz. 93, 105 Pac. (2d) 966.

These budgets were computed upon the assumption that the yield of taxes upon respondent's shares of preferred capital stock would be forthcoming. Consequently by the amount that the budgets were impaired by the Act of Congress of March 20, 1936, the credit of the state, and of the political subdivisions affected, was proportionately impaired.

In these two suits now under consideration, the taxes had become a lien upon the stock in question. In E-333 (R. 17, 80) the lien had reached the point where the exact amount thereof had been determined and the tax was payable. In the other, the lien had become fixed, though the amount thereof was not yet known. These liens nevertheless were of equal dignity.

United States vs. Alabama, 313 U. S. 274, 85 L. Ed. 1327, 61 Sup. Ct. Rep. 1011.

STATE IS PERSON WITHIN FIFTH AMENDMENT

It was argued below that the word "person" as used in the Fifth Amendment does not include a state. Perhaps historians might deduce that it wasn't intended to include private corporations, although none would make the point now. That amendment, together with all the provisions of the Constitution, was design-

*This section is printed in the Appendix beginning at page 6.
**This section is printed in the Appendix beginning at page 11.

ed to be effective for centuries to come, and just as reasonably contemplated protection of property rights of states as the creation of an organization such as the Reconstruction Finance Corporation. But even on an historical basis, the word should be given a broad meaning. The first ten amendments were designed as a brake upon the authority of the new government—at least so the history books tell us—and it is obvious that to some extent protection for the states was under consideration, as witness the Tenth Amendment. The Circuit Court of Appeals, however, did not deny to the State of Arizona the right to claim the benefit of the Fifth Amendment. Indeed, we think it could not well have done so, in view not only of the considerations mentioned above, but also of the decisions of this court:

Georgia vs. Evans, —— U. S. ——,
86 L. Ed. 927, 62 Sup. Ct. Rep. 972;

Ohio vs. Helvering, 292 U. S. 360,
78 L. Ed. 1307, 54 Sup. Ct. Rep. 725;

City of St. Louis vs. Western Union,
148 U. S. 92, 37 L. Ed. 380, 13 Sup. Ct.
Rep. 485.

STATE WAS PROTECTED BY TENTH AMENDMENT

And what of the Tenth Amendment? The powers that are reserved to the states are the residuum of complete sovereignty after subtracting such powers as were delegated by the states to the United States or prohibited to the states by the Constitution. There is a zone over which the federal government may fittingly extend its legislative program; or it may acquiesce in the assumption by the state of the power of regulation. While such power is being exercised by

the state, it is nothing short of complete. Any other view would deny the doctrine of state sovereignty. True enough, Congress may occupy the field and exclude the states but this raises no implication that the power in the state while validly exercised is limited or less than complete; nor, it will not be pretended that Congress could retroactively destroy that which the state had meanwhile validly created or authorized.

Our case is stronger. The State of Arizona did not assume the power to tax this preferred stock—it was invited to do so. While it was subject to state taxation, the exercise of sovereignty over it in the matter of this taxation was exclusively in Arizona. The United States did not retain any right to supervise or control or rescind the exercise by the State of Arizona of its power of taxation.

It would be entirely inconsistent with the theory of our system of government that the state in the exercise of its conceded power is nevertheless unable to act as a sovereign power. The theory sustained by the Circuit Court of Appeals that Congress could surrender this power to the state, without any limitation, but nevertheless retain by implication the right to destroy the exercise of the power, finds no support in the Constitution.

SUIT BY STATE LIES TO COLLECT TAX

Concededly, property belonging to the United States may not be sold under execution in discharge of valid state taxes if the government is unwilling to be sued. We have no such situation as existed in United States vs. Alabama, supra, where the government acquired property upon which a tax in favor of the state had

attached. The government did not try to destroy that tax—it merely exercised its governmental prerogative of refusing to be sued, a prerogative itself unenthusiastically accepted by this Court, and by some eminent men thought to be a monarchical survival, out of place in this country.

United States vs. Lee,
106 U. S. 196, 27 L. Ed. 171.

It would be a grave question whether Congress may destroy taxes levied on the property of federal agencies by express and valid Congressional consent (a consent which has been widely granted) by later clothing those institutions with governmental immunity from suit. No doubt the present state of decision is that a state may not, in the assertion of any of its interests, sovereign or proprietary, sue the United States without its consent. On principle, this position is not easily defended in view of one of the important purposes of the constitution, viz: to afford a forum for the peaceful settlement of controversies between the two governments; and it is difficult to reconcile it with the holding that the United States may sue one of the states against its will.

United States vs. Texas, 143 U. S. 621,
12 Sup. Ct. Rep. 488, 36 L. Ed. 285.

We know of no decision by this court, however, which goes to the point of holding that immunity from suit may be extended to an agency of the federal government as against claims by a state on obligations validly authorized by Congress. Some overpowering necessity must exist to justify a government in taking the unmoral position that it may destroy valid, legal claims against it by withholding from the claimant the right to institute suit for the recovery thereof. There

is no justifiable reason, we submit, why a doctrine so unconscionable should be extended to federal agencies as to claims held by anyone, let alone states.

United States vs. Lee, supra.

We are dealing with the question of suability, not enforceability. The United States may acquiesce in being sued but may refuse to make the necessary appropriation to pay an adverse judgment. Similarly, a state could no doubt frustrate a judgment against it in a suit which it had authorized. The Reconstruction Finance Corporation is an institution separate from the government and no act of Congress is needed to collect a judgment against it.

The privilege of nonsuability can be waived. The states waived it by becoming members of the Union to the extent set forth in Article III of the Constitution as modified by the Eleventh Amendment. It may be that the United States could not bind itself, even to a state, to waive this immunity but no reason appears why it may not make a binding waiver as to such agencies as are here involved, a national bank, chiefly privately owned, and a federal corporation largely engaged in business competition with private commercial firms.

Here the right to sue national banks and the Reconstruction Finance Corporation has existed during the entire period involved in these cases and still exists.

Title 12, Sec. 24, U.S.C., Revised Statutes, Sec. 5136, as amended, 54 Stat. 261;*

Title 15, Sec. 604, U.S.C. as amended, 54 Stat. 574.**

*This section is printed in the Appendix beginning at page 5.
**This section is printed in the Appendix beginning at page 2.

As applied to this case, the language of the Act under challenge is that the stock "shall not be subject" to the taxation which has already been legally "imposed, levied". Is the doctrine that the United States may not be sued without its consent now to be extended to a rule that Congress may at once command its courts to hear cases in which the United States, or any of its numerous agencies is a party, but nevertheless deny to its opponent the protection of the Constitution?

This Court has said that if the government appears willingly as a party, it stands at the bar of the Court under the law as any other party.

The Siren, 7 Wallace 152, 19 L. Ed. 129;
Curran vs. Arkansas, 15 Howard 304, 14 L. Ed. 705;
Clark vs. Barnard, 108 U. S. 436, 27 L. Ed. 780.

The requirement of the Arizona statute, Section 3070, Revised Code of Arizona, 1928,* that the bank pay the taxes and protect itself through a statutory lien on the shares of the stock has been sustained by this court as an insignificant interference with the operations of the bank.

First National Bank vs. Commonwealth, 9 Wallace 353, at 362, 19 L. Ed. 701.

In Arizona these taxes are collectible in a suit at law against the bank itself, and there is nothing in the Federal Constitution or statutes to inhibit such procedure.

Brophy vs. Powell (Ariz.), 121 Pac. (2d) 647.

*This section is printed in the Appendix beginning at page 8.

On principle, such suit might be maintained against the Reconstruction Finance Corporation, the primary tax obligor.

Nor may the Act of March 20, 1936, be construed as an implied repeal of the federal statutes authorizing the banks and Reconstruction Finance Corporation to be sued. An effort was made to save the statute involved in:

Lynch vs. United States, 292 U. S. 571, 78 L. Ed. 1434, 54 Sup. Ct. Rep. 840,

which disregarded certain contractual rights of veterans of the last war, by urging its acceptance as a withdrawal of the right to sue the federal government. This court took the view, however, that the purpose of the statute was clearly to destroy a property right, and that if the intention had been to withdraw the right to sue the government, it should have been expressed. "The present climate of opinion" said Chief Justice Hughes for this court in the case of

Reconstruction Finance Corporation vs. Menihan Corporation, 312 U. S. 81, 85 L. Ed. 595, 61 Sup. Ct. Rep. 485,

is against immunity from suit for governmental corporate agencies of this kind and it will never be implied in their favor.

The Circuit Court of Appeals was content to rest its decision upon the power of the federal government to exempt shares of national banks from state taxation, and the asserted correlative power to withdraw such shares from state taxation after consent had been given to the state to tax them.

The implications of the Fifth and Tenth Amendments, although invoked by petitioners, were subordinated by the Circuit Court of Appeals to a complacent acceptance of the legislative pronouncement withdrawing the right to tax upon the assertion that the privilege of taxing was a gratuity for which nothing was given or received.

The state and its agencies, we think, are entitled to know whether or not in this era of expanding enterprise by the federal government, Congress may interfere with the functions of the state lawfully exercised by its consent without regard to the harm inflicted, and, if it may, that the pronouncement of Congress alone disentitles the state to invoke the protection of the Fifth or Tenth Amendments or both.

CONCLUSION

Respondent pleads that it stands ready to pay as taxes such further sums over and above the tenders which it made as may be found to be just and equitable, (R. 56, 124; R. 239, 308).

Accordingly it is respectfully submitted that the judgments of the Circuit Court of Appeals, and of the District Court, be reversed with directions to enter

judgments for petitioners for the full amount of the taxes levied and to foreclose the liens thereof..

Respectfully submitted,

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Appendix Follows

APPENDIX

Fifth Amendment to Constitution of the United States:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensaiton."

Tenth Amendment to the Constitution of the United States:

> "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Section 240 (a) of the Judicial Code (28 U.S.C., Sec. 347 (a)):

> (a) In any case, civil or criminal, in a circuit court of appeals, or in the United States Court of Appeals for District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted appeal."

Section 24 of the Judicial Code, as amended (Title 28, Sec. 41, U.S.C.)

"The District Courts shall have original jurisdiction as follows:

"First. Of all suits of a civil nature, at common law or in equity, * * * where the matter in controversy exceeds, inclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States * * * "

Section 128 (a) of the Judicial Code, as amended (Title 28, U.S.C. Sec. 225):

"The Circuit Courts of Appeal shall have appelate jurisdiction to review by appeal final decisions—First. In the District Courts, in all cases save where a direct review of the decision may be had in the Supreme Court under section 345 of this title."

Title 15, U.S.C., Sec. 604; amended June 25, 1940, c. 427, Sec. 6 (b), 54 Stat. 574:

"604. *Period of succession; powers; use of mails and other facilities of Government.*

"The corporation shall have succession for a period of fifteen years from the date of the enactment hereof, unless it is sooner dissolved by an Act of Congress. It shall have power to adopt, alter, and use a corporate seal, which shall be judicially noticed; to make contracts; to lease such real estate as may be necessary for the transaction of its business; to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal; to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of the business of the corporation, without regard to the provisions of oth-

er laws applicable to the employment and compensation of officers or employees of the United States; to define their authority and duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and to prescribe, amend, and repeal, by its board of directors, by-laws, rules, and regulations governing the manner in which its general business may be conducted and the powers granted to it by law may be exercised and enjoyed, including the selection of its chairman and vice chairman, together with provision for such committees and the functions thereof as the board of directors may deem necessary for facilitating its business under Sections 601-604, 605, 606-606b, 606g, 607, 608, 609, 610, 611, 612, 613, 614-616, and 617 of this title. The board of directors of the corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid. The corporation shall be entitled to the free use of the United States mails in the same manner as the executive departments of the Government. The corporation, with the consent of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, may avail itself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of the sections hereinbefore enumerated."

R. S. Sec. 5219, 42 Stat. 1499, 44 Stat. 223; Title 12, Sec. 548, U.S.C.:

"The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, or (2) include dividends derived therefrom in the taxable income of an owner or holder

thereof, or (3) tax such associations on their net income, or (4) according to or measured by their net income, provided the following conditions are complied with:

"1. (a) The imposition by any State of any one of the above four forms of taxation shall be in lieu of the others, except as hereinafter provided in subdivision (c) of this clause.

"(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: *Provided*, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

"(c) In case of a tax on or according to or measured by the net income of an association, the taxing State may, except in case of a tax on net income, include the entire net income received from all sources but the rate shall not be higher than the rate assessed upon other financial corporations nor higher than the highest of the rates assessed by the taxing State upon mercantile, manufacturing, and business corporations doing business within its limits: *Provided, however*, That a State which imposes a tax on or according to or measured by the net income of, or a franchise or excise tax on, financial, mercantile, manufacturing, and business corporations organized under its own laws or laws of other States and also imposes a tax upon the income of individuals, may include in such individual income dividends from national banking associations located within the State on condition that it also includes dividends from domestic corporations

and may likewise include dividends from national banking associations located without the State on condition that it also includes dividends from foreign corporations, but at no higher rate than is imposed on dividends from such other corporations.

"(d) In case the dividends derived from the said shares are taxed, the tax shall not be at a greater rate than is assessed upon the net income from other moneyed capital.

"2. The shares of any national banking association owned by nonresidents of any State, shall be taxed by the taxing district or by the State where the association is located and not elsewhere; and such association shall make return of such shares and pay the tax thereon as agent of such nonresident shareholders.

"3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

"4. The provisions of section 5219 of the Revised Statutes of the United States as in force prior to March 25, 1926, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section."

R. S. Sec. 5136, as amended 54 Stat. 261; Title 12, Sec. 24, U.S.C.:

"24. *Corporate powers of associations.*

"Upon duly making and filing articles of association and an organization certificate a national banking association shall become, as from the date of the execution of its organization certificate, a

body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

"First. To adopt and use a corporate seal.

"Second. To have succession from February 25, 1927, or from the date of its organization if organized after February 25, 1927, until such time as it be dissolved by the act of its shareholders owning two-thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

"Third. To make contracts.

"Fourth. To sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.

Section 2611, Revised Code of Arizona, 1928 (appearing in the Arizona 1939 Annotated Code as 10-105):

"10-105. *Survey by governor—Budget, submission to legislature.*—On or before the first day of January of each year preceding regular legislative sessions, the governor and his secretaries shall have completed a careful survey of all the public offices and agencies of the state, upon which to base his recommendations to the legislature. Within five (5) days after the beginning of the regular session of the legislature, the governor shall present to the presiding officer of each branch of the legislature printed copies of a budget, based upon his own conclusions and judgment, containing a complete and itemized plan of all proposed expenditures for each public office, or agency, or undertaking, classified by subject, character and purpose; and a like statement of estimated revenues, balances or deficits

of funds, for each year of the biennial period beginning with the first day of July thereof, and include therein an estimate of amounts which may be required to meet any emergency due to casual deficits in funds, failure of revenues, or other contingency, with suggestions as to any immediate appropriation therefor. The budget so prepared shall show the actual financial condition of each fund, appropriation and activity of the agencies of the state as shown by the annual reports made and filed covering at least two (2) completed fiscal years prior thereto; the items as estimated by reporting agencies as being necessary for the ensuing biennial period after July first following said budget; the actual appropriations for purposes of the two (2) preceding fiscal years, and for the current fiscal year; all so placed in separate parallel columns that the appropriations for each year, and the actual expenditures as estimated by the governor, may appear and show by comparison thereof, the increase and decrease, in items, purposes and objects, and to be so summarized and totaled that aggregates of all deficits, and aggregates of all estimates of other state officers, and offices, with the aggregate of expenditures and appropriations as proposed by the governor, may appear therein in positions for comparison. Such budget shall contain an itemized and complete financial balance statement for the state at the close of the last fiscal year preceding the budget, and include a statement of the debts, current assets, liabilities, reserves and trust funds accurately disclosing the financial condition of the state, and every department and state agency."

Section 3069, Revised Code of Arizona, 1928 (appearing in the Arizona 1939 Annotated Code as 73-204):

"73-204. *Assessment of property and shares of stock in corporations—Banking, building and loan associations or corporations, and finance*

corporations.—The property of corporations shall be assessed and taxed and no assessment shall be made of the shares of stock of corporations, nor shall any holder thereof be taxed for such shares. The foregoing provision shall not apply to a banking corporation; building and loan associations or corporations, and a corporation or association engaged in the business of using money wherewith to make money for the owners of its shares, the shares of stock of which shall be assessed and taxed as other property, in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of, and be payable by, such corporation or association."

Section 3070, Revised Code of Arizona, 1928 (appearing in the Arizona 1939 Annotated Code as 73-205):

"73-205. *Statement to assessor by banking corporation and shareholders — Tax payable by corporation.*—Upon the demand of the assessor, the officers in charge of any such banking corporation or such corporation or association engaged in the business of using money wherewith to make money, shall make out and deliver to said assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares owned by him; the surplus, reserve fund, and undivided profits; and the par and marked value of the shares. The full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return made to any officer of the state or the United States, from actual sales of the stock, or from other trustworthy sources. Every such shareholder shall, where such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein, and if the shareholder fail to do so, the assessor shall list and assess such unrendered shares as other un-

rendered property. The taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

Section 3071, Revised Code of Arizona, 1928 (appearing in the Arizona 1939 Annotated Code as 73-206):

"73-206. *Situs of stock — Where tax payable.* —Every such corporation or association, for the purpose of said assessment, shall be considered as located in every county, city or town wherein it has an office for the purpose of carrying on its business, and the shares shall be subject to taxation in any county, city or town wherein it has such office. The officer of such corporation or association shall state in his statement if his association or corporation is subject to taxation in more than one (1) county, city or town, and the proportion of its assets situated in each thereof. The shares of such corporation or association shall be taxed in each county, city or town for only such portion of their value as the assets situated in that county, city or town bear to the assets of the entire corporation or association. When a bank maintains branches or conducts business in more than one (1) county, city or town, the assessed value of the capital stock shall be apportioned among the several counties, cities and towns in which the main office or such branches are maintained or business conducted, and the amount apportioned to each county, city or town shall not be less than the actual cash value of the real and personal property of such bank situated in such county, city or town."

Section 3074, Revised Code of Arizona, 1928, (appearing in the Arizona Code Annotated, 1939, as Section 73-402):

"73-402. *Assessments.— When and how made.* —Between the first Monday in January and the first day in May in each year, the county assessor, except as otherwise required by the state tax commission, shall ascertain, by diligent inquiry and examination, all property in his county subject to taxation, the names of all persons owning, claiming, or having the possession or control thereof, determine the full cash value of all such property, and then list and assess the same to the person owning, claiming, or having the possession, charge, or control, thereof. The property of a ward shall be listed by his guardian; of a minor, having no guardian, by his father, if living, if not, then by his mother, if living, then if not, by the person having the property in charge; of a beneficiary for whom property is held in trust, by the trustee; of a deceased person by the executor or administrator; of a person whose assets are in the hands of receiver by such receiver; of a corporation, association, society, or partnership, by its principal accounting officer, agent, or partner. Property under mortgage, contract, or lease shall be listed by and taxed to the mortgagor or lessor, unless it be listed by and taxed to the mortgagee or lessee. Personal property in the hands of a trustee, agent, administrator, executor, or receiver, and personal property mortgaged or pledged shall, for the purpose of taxation, be deemed the property of the person who has the possession thereof, and shall be listed by such person. The assessor may demand from each person and firm, and from the president, cashier, treasurer, or managing agent of each corporation or association within his county, a correct list under oath or affirmation, of all the property within the county, owned or claimed by, or in the possession or control of, such person,

firm, corporation, or association; may call for information therefrom bearing upon the valuation or listing of taxable property; may examine any maps, drawings, books, invoices, and papers; summon witnesses to appear and testify and compel them to produce such books and papers; and, upon the failure, neglect, or refusal, of any person to obey, such person shall be guilty of a misdemeanor. If any person shall neglect or refuse on demand, or fail without demand of the assessor or his deputy, to give, under oath or affirmation, the list required, or if the owner of any property not listed by another person, shall be absent or unknown, the assessor shall fill out a list for such person, putting therein all taxable property which he has reason to believe is owned by, or in the possession or control of said person, liable to taxation. If the name of an absent owner is known to the assessor, the property shall be assessed in his name, if unknown to the assessor, it shall be assessed to 'unknown owners.' If the assessor believes that any person has not returned a full and complete list of all the property under his control, he may make such investigation as he may deem necessary to ascertain the full amount and extent of such property. The cost of such investigation shall be a charge against the county; provided, that if the assessor finds more property than is returned in said list, said cost shall be assessed as a penalty against the property so found and collected at the time the tax is collected. Any property discovered to have escaped assessment shall be assessed at its full cash value for the current year and each year it escaped assessment."

Section 3097, Revised Code of Arizona, 1928 (appearing in the Arizona 1939 Annotated Code as 73-502):

"73-502. *County and city officer to make annual statement and estimate — Publication and*

notice.—The Board of supervisors of each county, and the governing body of each incorporated city or town, not less than thirty (30) days prior to the date on which the regular annual tax levy is made, shall prepare a full and complete statement of the financial affairs of the fiscal year last past; and an estimate of the different amounts which may be required to meet the public expense for the ensuing year, fixing the amounts proposed for all subjects of recurring items of expense and an amount for contingency or emergency not anticipated. The estimate shall contain a statement of the amount of money required for each item of expenditure necessary for county, city or town purposes, the amounts necessary to pay the interest and principal of any bonds, and the items and amounts of every special levy provided by law. The estimate shall be entered upon the minutes of the governing body and shall be fully itemized, showing under separate heads the amounts proposed as required for each department, public office or official, for each public improvement, for the maintenance of each public structure, institution and school, and the salary of each public officer; the amounts proposed for the maintenance of public highways, roads, streets, and bridges, and the construction, operation and maintenance of each public utility, and a full and complete disclosure and statement of the contemplated expenditures for the ensuing year, showing the amount proposed to be expended from each separate fund, and the total amount of proposed public expense. Said statement shall also contain a statement of the receipts for the previous year from sources other than direct property taxation, the amounts actually levied and amounts actually collected for county, city, or town purposes upon the tax rolls of the previous fiscal year, and the amount proposed to be raised by taxation upon the real and personal property of such county, city or town, for each purpose for the said ensuing year. The

total amounts in such estimates proposed for expenditure shall not exceed by ten (10) per centum the aggregate of actual expenditures for the previous year exclusive of expenditures for school, bond, special assessment and district levy purposes. The form of such statements shall be furnished by the state tax commission, to comply with the requirements hereof. The estimates together with a notice that such board of supervisors, or governing body, will meet for the purpose of making tax levies, as set forth in said estimates, naming the time and place of holding such meeting, shall be published for at least two (2) consecutive weeks following the tentative adoption of such estimates, in the official newspaper of such county, city or town, if there be one, if not then in a newspaper of general circulation therein.".

Section 3101, Revised Code of Arizona, 1928, as amended by Chapter 106, Session Laws of Arizona for 1931 (appearing in the Arizona 1939 Annotated Code as 73-506):

"73-506. *Lien for taxes — Liability of Property — Homestead exempt.* — Every tax levied under the authority of this chapter upon real or personal property shall be a lien upon the property assessed. The lien shall attach on the first Monday in January in each year, and shall not be satisfied or removed until such taxes, penalties, charges and interest are all paid, or the property has finally vested in a purchaser under a sale for taxes. The lien shall be prior and superior to all other liens and encumbrances upon the property, except liens or encumbrances held by the State of Arizona. Personal property shall be liable for taxes levied on real property, and real property shall be liable for taxes levied on personal property, and a judgment against real property for non-payment of taxes thereon or assessed to the personal property of the same person, shall

not be prevented by showing that the owner thereof was possessed of personal property out of which the taxes could have been made; but real property occupied as a homestead shall not be charged for taxes other than the taxes due on such homestead."

No. 449

In the Supreme Court of the United States

OCTOBER TERM, 1942

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer, and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a national banking association,

Respondent.

SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONERS

On Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

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No. 449

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Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a national banking association,

Respondent.

SUPPLEMENTAL BRIEF ON BEHALF OF PETITIONERS

We are directed to discuss "whether petitioners, who are counties, are within the constitutional protection which they assert", being the Fifth and Tenth Amendments.

I.

COUNTY TREASURERS, WHO ARE INCLUDED AS PETITIONERS, ARE STATE OFFICERS

The petitioners are the counties of Maricopa and Pima, Arizona, and their officials, all having been joined as defendants in plaintiff's suit for an in-

junction. The tax collectors are the county treasurers of the counties in Arizona and none others than they were necessary parties defendant to an effective injunction. The country treasurers collect both state and county taxes, as well as those for cities and towns (with the single exception of Phoenix, as to Maricopa County) school districts, and other political subdivisions, and the judgments enjoin them alone. (R. 202, 267).

These petitioners originally believed that this suit fell within the terms of the Three Judge Act, Section 266 of the Judicial Code, Title 28, U.S.C. 380, and the county treasurer of Pima County alone, as a state officer within the meaning of that statute, petitioned this Court for a writ of mandamus to require the District Judge to convene a Three Judge Court. It was held that he was a proper and sufficient party petitioner, i.e. an officer of the State of Arizona, although the petition was denied upon other grounds.

Ex Parte Bransford, 310 U.S. 354,
84 L. Ed. 1249, 60 Sup. Ct. Rep. 947.

The constitutional protection which is asserted in this case is on behalf of the state. Similarly, it is asserted on behalf of counties, municipalities, school districts, irrigation districts, and other legal subdivisions for whom the county treasurer collects taxes. The State of Arizona by its lawful agents is as much a party as though it were represented by the Governor and the Attorney General. These suits are necessarily against state officers, as formal parties defendant, rather than the states themselves. It may be that the Court did not have in mind any distinction between the state and a county thereof, and we will at first,

therefore, consider the question as though the word "state" was included in the question. Later we will undertake to discuss the question specifically as put under Subdivisions II and III, pages 13 and 22, infra.

We take the position that by the Fifth and Tenth Amendments, as well as the other eight of the first ten, protection was intended to be granted to states and their counties and legal subdivisions and all persons, natural and artificial, who are judicially cognizable and to whom the language of the amendments is appropriate.

Twelve amendments were submitted by the First Congress as a group and most likely so considered by the states. No one was better qualified to state the purpose behind these amendments than Chief Justice Marshall, who had taken an active part in the Virginia Constitutional Convention.

In

Barron vs. Baltimore, 7 Peters 243, 8 L. Ed. 672,

the question was whether the Fifth Amendment was a limitation upon the power of the states. The court, speaking through the Chief Justice, held that it was not and, in language often quoted since, proceeded to state the purpose of the first ten amendments in these words:

> "But it is universally understood, it is a part of the history of the day, that the great revolution which established the Constitution of the United States was not effected without immense opposition. Serious fears were extensively entertained that those powers which the patriot statesmen who then watched over the interests of our country, deemed essential to union, and to the attain-

> ment of those invaluable objects for which union was sought, might be exercised in a manner dangerous to liberty. In almost every convention by which the Constitution was adopted, amendments to guard against the abuse of power were recommended. These amendments demanded security against the apprehended encroachments of the general government—not against those of the local governments."

We think we are justified in interpreting this statement to mean that the amendments were designed to prevent the new government from destroying liberty in its broadest sense, that is to say, whether it be the liberty of persons, states, or local governmental institutions.

Indeed, that very idea was expressed by the Supreme Court a few years later in

> *Withers vs. Buckley*, 20 Howard 84,
> 15 L. Ed. 816.

The holding was that the Fifth Amendment was not available to one who complained of action by the State of Mississippi. The Court adopted the language it had used in the Barron case and considerably enlarged thereon. The sentence we have in mind reads:

> "In all such cases this court has ruled, that the clause in question" (taking property without compensation) "was applicable to the federal government alone, and not to the states except as it was designed for their security against federal power."

Both expressly and by implication, we think, it is clear that it was intended that the states would be beneficiaries of the guarantees of these amendments. Thus, the Second Amendment prohibits the infringe-

ment of the right of the people to keep and bear arms so that a well regulated militia may be maintained. The militia intended was that which a "free" state might maintain. The Tenth Amendment specifically reserves to the states powers not surrendered to the United States or prohibited to them.

The emphasis of the Constitution makers at the time was on the creation of restraints against the exercise of the federal power. They may not have clearly foreseen the possibility of arbitrary action by the Federal Government which would affect the property interests of states,—ex. g., depriving without due process, taking without compensation, etc.—, but it seems clear that had it been brought specifically to mind and any question as to the sufficiency of the language to include states been raised, the amendments would have included states by name.

Nor was there opportunity for critical examination of words or alteration of the language submitted by Congress. It was a case of adopting the amendments as written or seriously delaying action. The Tenth Amendment was obviously designed to take care of situations unmentioned elsewhere in the proposals and purposely phrased to include the states and their people.

In short, these amendments were drawn for the protection of the liberty of all those who might need it in the protection of their lives, liberty or property and who were capable of appealing to the courts for such protection. We see no justification in reading an exception in these guarantees. They have been applied to every kind of person, natural and artificial, even to alien enemies and German spies, and there should certainly be some overpowering reason why a state

and political subdivisions thereof, seeking to protect their property rights, are to be regarded as the only entities not entitled to invoke these constitutional safeguards. We know of no such reason.*

A discussion of the meaning of particular words and phrases employed in these amendments is not, we think, particularly helpful. Volumes have been written on "due process" and "liberty" and their outlines are still only rather vaguely discerned. Nevertheless, if we consider the meaning of the word "person" as used in the Fifth Amendment, we think the result is the same. That word was, we submit, intended to have its broadest signification. Artificial persons at that time were not unknown and were included, as this Court had no difficulty in deciding. Such a creature of the state is not unlike the state itself, particularly in these days when we find states engaging in industrial enterprises.

In

Ohio vs. Helvering, 292 U.S. 360, 78 L. Ed. 1307, 54 Sup. Ct. Rep. 725,

the State of Ohio in its operation and control of the liquor business was held to be a "person" and thus required to comply with the United States Revenue Act requiring the payment of a license tax. U.S.C. Title 26, Sec. 205 (Rev. Stat. Sec. 3244, as amended.). It is true that a statute defining "person" to include "corporations" was applicable there and that the Court concluded that Ohio should be considered such a corporation in the operation of said business, but the case

*We invite the Court's attention to Mr. Warren's work "Congress, The Constitution and The Supreme Court", p. 75, et. seq. He supports our view that the first Ten Amendments were designed to protect the states as well as individuals.

stands for the broader proposition that the word "person", undefined may include a state, and in that case did so. A number of cases were cited with approval by the Court. Of these,

Giddings vs. Halter, 19 Mont. 263,
48 Pac. 8,

holds that the word "person" includes "United States" within the intent of a covenant in a deed warranting title against "all persons" claiming adversely;

State vs. Herold, 9 Kans. 194,

holds that the United States is a "person" within the meaning of a statute making criminal the cutting of timber etc. on the lands of any "person";

Martin vs. State, 24 Tex. 61,

holds that a statute making it a crime to alter a public record with intent to defraud any "person" was violated if the state was so defrauded;

Indiana vs. Woram, 6 Hill 33,
40 Am. Dec. 378,

holds that a statute defining "person" as including a corporation thereby includes the state, since it was said not to be questionable that "a state is a corporation";

Re Western Improvement Company,
166 Fed. 576,

took a similar view of the word "person", defined by the Bankruptcy Act of 1898 as including corporations.

Apparently viewing the matter as though there was no distinction between a state and other subordinate bodies politic and corporate, this Court also cited:

Bray vs. Wallingford, 20 Conn. 416,

where a "territorial corporation such as a town" was held to be a person within the meaning of a statute granting relief by foreign attachment, and

Lancaster County vs. Trimble, 34 Neb. 752, 52 N. W. 711,

where the Court held a county of Nebraska to be a "person" within the meaning of a statute authorizing the enforcement of tax liens by "persons", and

Rains vs. Oshkosh, 14 Wisc. 372,

where it was held that the City of Oshkosh was a "person" within the meaning of a statute authorizing an action for unlawful holding over of real estate. In that case the Court said:

> "The language of the statute is general, and applies to any person who holds over demised premises after the termination of the lease, or contrary to the covenants thereof or after rent becomes due; and we have no doubt that the word 'person' extends to municipal corporations. We can conceive of no possible reason why the statute should not extend to corporations, public or private, for the remedy is quite as essential and necessary against them as against a natural person."

Lastly, this Court cited with approval

In re Jensen, 28 Misc. 378, 59 N.Y.S. 653,

which we think is rather close to the mark. The Constitution of New York, Art. 1, Sec. 6, contains the customary due process clause—"no person shall be deprived of life, liberty or property without due process

of law." A New York statute provided that any city official who had successfully defended an action by the city charging him with wrongdoing of a certain character should be reimbursed by that city for his expenses and counsel fees. The tribunal designated to determine the amount of such fees was a court, but the statute did not provide the city with an opportunity to present its side of the case to the court. This omission was held to violate the due process clause and the statute was ignored.

In

United States vs. Cooper, 312 U.S. 600, 85 L. Ed. 1071, 61 Sup. Ct. Rep. 742,

this Court, by a four to three decision, held that the United States was not a "person" within the meaning of the Sherman Anti-Trust Act allowing an injured person treble damages because, or at least mainly because, other effective methods of enforcing the Act were open to the Government while relief through treble damages was alone granted to other "persons".

Many years earlier this Court had held that the United States was a "person" within the meaning of a Texas statute of limitations requiring suit against "'persons' in peaceable" etc. possession to be brought within a certain period of limitations. The view of the Court was that the Government might avail itself of the benefits of a statute in favor of persons generally, although not be bound by a statute controlling the acts of "persons" unless by express language such control against the Government was evidenced.

Stanley vs. Schwalby, 147 U.S. 508, 37 L. Ed. 259, 13 Sup. Ct. Rep. 418.

The meaning of the word "person" as used in the Sherman Anti-Trust Act came before this Court again in the late case of

Georgia vs. Evans, —— U.S. ——,
86 L. Ed. 929, 62 Sup. Ct. Rep. 972,

and there the Court held that a state was a "person" entitled to recover treble damages, distinguishing the Cooper case on the grounds already noted.*

Blackstone in his Commentaries (Vol. 1, p. 123) divides persons as follows:

> "Persons also are divided by the law into either natural persons, or artificial. Natural persons are such as the God of nature formed us; artificial are such as are created and devised by human laws for the purpose of society and government; which are called corporations or bodies politic."

We cannot believe that the constitutional guarantees of the Fifth Amendment are to be granted to or withheld from states, and their political subdivisions, on the basis of any distinction between their acting in a proprietary or governmental function. So far as a state is concerned, we submit it would be a distinction without a difference to grant protection if the Court should deem the state was acting merely as a proprietor and deny the protection if it deemed the state was acting in its governmental capacity. Not only would there be difficulties in applying this distinction, but in reason the state is just as much entitled to protect its property rights acquired through the exercise of some conventional governmental function, such as taxation, as it is to protect property it might receive by gift or

*See *Chattanooga F. P. Co. vs. Atlanta*, 203 U.S. 390, 51 L. Ed. 241, 27 Sup. Ct. Rep. 65, where this Court held without discussion that the City of Atlanta was a "person" as defined in the same statute.

grant or judgment. Nothing but confusion could result from an effort to draw such a distinction.

In

Pennsylvania vs. Wheeling Bridge Co.,
18 Howard 421, 15 L. Ed. 435,

a judgment for the state directing the removal of a bridge was constitutionally rendered nugatory by a subsequent Act of Congress legalizing the structure because the Court decree was executory; but the decree carried costs to the state and to that extent it was unaffected, and could not be affected by the Act of Congress. The Court observed that had Pennsylvania secured a judgment for damages instead of an injunction, it could not have been destroyed by Congress.

Nor is the question here involved "political" in its nature, such as were the questions in those cases which arose under the clause guaranteeing to the states a republican form of Government in Article IV, Section 4, of the Federal Constitution and in the so-called "Reconstruction Cases" in which the state of Georgia, as party plaintiff in this Court, sought an injunction against the enforcement of the Reconstruction Acts.

Georgia vs. Stanton, 6 Wall. 50,
18 L. Ed. 721.

Here, the State of Arizona has property rights which it is seeking to protect, namely, taxes and the lien therefor. If more is needed, we call the Court's attention to the fact that these taxes may be used not alone to sustain conventional governmental operations but also the construction and maintenance of industrial operations, which are open to the state under its Constitution. Article II, Section 34, of the Arizona Constitution provides:

> "Section 34. The State of Arizona and each municipal corporation within the State of Arizona shall have the right to engage in industrial pursuits."

Article XIII, Section 5, of the Arizona Constitution provides:

> "Section 5. Every municipal corporation within this State shall have the right to engage in any business or enterprise which may be engaged in by a person, firm, or corporation by virtue of a franchise from said municipal corporation."

We might add that we think it would be rather anomalous, to say the least, if state officers (i.e. county treasurers who collect state taxes) could be brought into Federal courts by a complaint for an injunction against them, which is, of course, a suit against the state for all practical purposes, and they not be permitted on behalf of their state to contest the validity of an Act of Congress upon which the plaintiff relies because, if they were allowed to do so, they would raise a "political" question. It may be that a state cannot initiate such a proceeding in this Court or elsewhere, but it is a different proposition to say that it, or its officers for it, cannot in defense rely upon the Federal Constitution for any such reason. There has been no holding by this Court that they cannot.

Neither is this such a case as

> *Smith vs. Indiana*, 191 U.S. 138,
> 48 L. Ed. 125, 24 Sup. Ct. Rep. 51,

where a county auditor refused to follow the mandate of a statute which lessened a taxpayer's taxes, on the ground that that statute was unconstitutional as violating the Fourteenth Amendment. The Supreme Court

of his state sustained the act and he undertook to carry the case to this Court, which held that the auditor had no such interest as would justify him in his attack in this Court on the statute. The public official was, of course, being, or trying to be, public spirited, but something more than that is needed to justify a challenge of the constitutional validity of state legislation by an officer of that state.

So, also,

Columbus & G. R. Co. vs. Miller,
283 U.S. 96, 75 L. Ed. 81, 51 Sup. Ct. Rep. 392,

where the tax collector brought suit in his state court contesting the validity of a state statute which greatly lowered the railroad company's taxes, on the ground that it violated the Fourteenth Amendment. This Court held, in conformity with the Smith case, that as far as it was concerned, a state official was in no position to challenge an act of the Legislature of his own state.

It is submitted that there is nothing in the context of these amendments, or the purpose behind them, that justifies a construction excluding states and their public subdivisions of their protection as owners of property rights, however acquired or used.

II.

PETITIONERS HEREIN, WHO ARE COUNTIES, MAY INVOKE THE PROTECTION OF THE FIFTH AMENDMENT

Since 1868 this Court, and inferior Federal courts, have consistently held that counties are corporations subject to the jurisdiction of Federal courts. The parent case is

Cowles vs. Mercer County, 74 U.S. (7 Wall.) 118, 19 L. Ed. 86.

It appears from that case that Cowles. a citizen of New York, brought suit in the Circuit Court of the United States for the Northern District of Illinois against the Supervisors of Mercer County, Illinois (a board authorized to contract for the county) upon certain bonds issued by the board on behalf of the county. The board moved to dismiss the case for want of jurisdiction, which was overruled, and the county appealed to this Court. A statute of Illinois provided that,

> "Each county established in the State shall be a body politic and corporate, by the name and style of 'The County of———;' and by that name may sue and be sued, plead and be impleaded, defend and be defended against, in any court of record, either in law or equity, or other place where justice shall be administered;"

In sustaining the jurisdiction of the lower court to entertain the case against the county, the Chief Justice, speaking for this Court, said:

> "The record presents but one question which has not been heretofore fully considered and repeatedly adjudicated. That question is, whether the board of supervisors of Mercer County can be sued in the Circuit Court of the United States by citizens of other States than Illinois. It presents but little difficulty.
>
> "The board of supervisors is a corporation created by acts of the legislature of Illinois. * * *.
>
> "In the case before us the corporators are all citizens of Illinois, and the corporation is liable to suit within the narrowest construction of the Constitution.
>
> "But it was argued that counties in Illinois, by the law of their organization, were exempted from suit elsewhere than in the Circuit Courts of the county. And this seems to be the construction

given to the statutes concerning counties by the Supreme Court of Illinois. But that court has never decided that a county in Illinois is exempted from liability to suit in National courts. It is unnecessary, therefore, to consider what would be the effect of such a decision. It is enough for this case that we find the board of supervisors to be a corporation authorized to contract for the county. The power to contract with citizens of other States implies liability to suit by citizens of other States, and no statute limitation of suability can defeat a jurisdiction given by the Constitution. We cannot doubt the constitutional right of the defendant in error to bring suit in the Circuit Court of the United States upon the obligations of the County of Mercer against the plaintiff in error."

In 1890 the rule announced in *Cowles vs. Mercer County,* supra, was reaffirmed by this Court in

Lincoln County vs. Luning, 133 U.S. 529, 10 Sup. Ct. Rep. 363, 33 L. Ed. 766.

The facts of that case disclose that Luning sued Lincoln County, Nevada, in the Circuit Court of the United States for the District of Nevada upon bonds and coupons which had been issued and sold by the county. Judgment went against the county. The primary question raised was the want of jurisdiction of the Circuit Court to entertain the action because, as it was claimed, the county was an integral part of the state and could not be sued under the Eleventh Amendment to the Constitution in the Circuit Court.

In directing itself to the jurisdictional question, this Court said:

"With regard to the first objection, it may be observed that the records of this court for the last

thirty years are full of suits against counties, and it would seem as though by general consent the jurisdiction of the Federal courts in such suits had become established. But irrespective of this general acquiescence, the jurisdiction of the Circuit courts is beyond question. The Eleventh Amendment limits the jurisdiction only as to suits against a State. * * *.

"With regard to the other objection the case of *Cowles vs. Mercer County*, 7 Wall. 118, 122, is decisive."

See also: *Lake County vs. Dudley*, 173 U.S. 243, 19 Sup. Ct. Rep. 398, 43 L. Ed. 684.

Loeb vs. Columbia Township Trustees, 179 U.S. 472, 21 Sup. Ct. Rep. 174, 45 L. Ed. 280.

Hopkins vs. Clemson Agriculture College, 221 U.S. 636, 55 L. Ed. 890, 31 Sup. Ct. Rep. 654, 35 L.R.A. (N.S.) 243.

And See: *Wayne County vs. U. S.*, 53 Ct. Cl. 417, affirmed 252 U.S. 574, 40 Sup. Ct. Rep. 394, 64 L. Ed. 723.

In *Lincoln County vs. Luning*, supra, constitutional provisions of Nevada were invoked by this Court to establish the corporate character of counties of that state. They are not dissimilar to provisions appearing in the Constitution and laws of Arizona, which constitute counties as bodies politic and corporate.

Section 1, Article XIII, of the Constitution of Arizona, provides:

"Section 1. Each county of the State, now or hereafter organized, shall be a body politic and corporate."

Sections 17-201 and 17-202, Arizona Code Annotated, 1939 (Sections 760, 761, Revised Code of Arizona, 1928) provide:

> "Sec. 17-201. Every county is a body politic and corporate, and the name of the county designated in this chapter is its corporate name, by which it must be known and designated in all actions and proceedings."
>
> "Sec. 17-202. Its powers can be exercised only by the board of supervisors or by agents and officers acting under its authority and authority of law. It has the power to sue and be sued; to purchase and hold lands within its limits; to make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers; to make such orders for the disposition or use of its property as the interests of its inhabitants require, and to levy and collect such taxes for the purposes under its exclusive jurisdiction as are authorized by law."*

It is observed from the foregoing quotations that the powers, as there enumerated, conferred upon counties of Arizona are similar to the powers conferred upon counties within the State of Nevada. (*Cowles vs. Mercer County,* supra). Among the powers conferred are the powers to sue and be sued; to purchase and hold lands; to make such contracts as may be necessary to the exercise of its powers; and to levy and collect taxes.**

Thus it is perceived counties in Arizona may enter into a variety of contracts to carry out its many com-

*The statute defining the powers of Boards of Supervisors is printed in the appendix at page 1.

**The Constitution of Arizona authorizes the State of Arizona and municipal corporations to engage in industrial pursuits. See page 12 supra. The Legislature of Arizona has authorized counties to construct and operate industrial plants for the manufacture of materials or commodities used in the construction of public highways or other public works. Sec. 17-203 Arizona Code Annotated 1939 which is printed in the appendix at page 1.

plex functions. In this capacity, as we have seen, they act as corporations and are amenable to the jurisdiction of the Federal courts like natural persons or private corporations.

Since a county is a corporation suable in a Federal court, as distinguished from the state, the rationale of the rule seems to justify the conclusion that it should be permitted to invoke the same protection accorded by the Federal Constitution, including the Fifth Amendment, as may the party who sues the county against its will in the Federal court. Jurisdiction of the Federal courts over counties presupposes, we think, that the county when sued stands there upon an equality with its adversary in the right to invoke the protection of the Federal Constitution. None of the cases, so far as our search has revealed, holds that the jurisdiction of the Federal courts over counties is a limited jurisdiction.

The powers conferred upon counties of Arizona include, as shown above, the power "to levy and collect taxes for such purposes", that is to say, for the purpose of performing the remaining powers conferred. Obviously the powers conferred could not be exercised, and when exercised, could not be performed, unless the concomitant power to levy and collect taxes is likewise conferred. Thus the protection afforded a county by the Federal Constitution is as important in its operation upon the tax as it is in its operation upon the powers which are sustained by the tax.

We have shown on pages 19 and 20 of Petitioners' Brief in Support of the Petition for Writ of Certiorari, that counties in Arizona operate upon the budget system and that taxes budgeted, but which are intercepted, impair not only the credit of the state, but also

the credit of the political subdivisions of the state affected by the tax, including counties. Thus, the performance of an executory contract by Maricopa County or Pima County concluded under powers conferred may be intercepted to the extent that a breach results for failure of the county to receive revenues necessary to perform the obligations calculated in the budget. The levy and collection of taxes is an indispensable function of the county, the impairment of which impairs the administration of the governmental affairs of the county under the powers conferred upon it.

Since a county, therefore, in respect to its contractual commitments, is subject to the jurisdiction of the Federal courts, assuredly a suit against a county in the Federal courts which seeks to invalidate a tax lawful when levied, and levied for the purpose of performing those commitments, strikes at the foundation of the orderly administration of the county government.

We believe no solid exception exists which justifies the conclusion that these petitioners may not invoke the Federal Constitution to protect a tax in a suit against them in the Federal courts where its adversary seeks to destroy the tax under a privilege invoked by it under the same Constitution.

Section 24(1) of the Judicial Code, Title 28, U.S.C., provides:

> "The District Courts shall have original jurisdiction as follows:
>
> "First. All suits of a civil nature, at common law or in equity * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the constitution or laws of the United States * * *

> or (b) is between citizens of different states * * *. No District Court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder, if such instrument be payable to bearer and be not made by any corporation, unless such might have been prosecuted in such court, to recover upon said note, or other chose in action, if no assignment had been made * * *."

It has been consistently held, aside from *Cowles vs. Mercer County* and *Lincoln County vs. Luning*, supra, that within the exception to the jurisdictional statute above quoted which authorizes an assignee of an instrument made payable to bearer to sue only when the instrument is made by a corporation, the word "corporation", as there employed, includes counties.

Pearl River County vs. Wyatt Lumber Co., (4 Cir.) 270 Fed. 26.
Scott County vs. Advance-Rumley Thresher Co. (8 Cir.) 288 Fed. 739.
Pettibone vs. Cook County, (8 Cir.) 120 Fed. (2d) 850 (Note 1, p. 851).
Bloomfield Village Drain District vs. Keefe, (6 Cir.) 119 Fed. (2d) 157.

In these proceedings, petitioners, as counties, were sued against their will in the District Court of Arizona in suits wherein the respondent bank invoked the protection of the Constitution of the United States. (Tr. of Rec. Par. XXXIX, p. 75 and Par. XL, p. 146). Petitioners, as defendants below, by their answers, likewise invoked the protection of the Constitution of the United States against the retroactive feature of the Act of Congress of March 20, 1936. (Tr. of Rec. Pars. XLV, XLVI, XLVII, pps. 167, 168, and Tr. of

Rec. Pars. XLV, XLVI, XLVII, pps. 185, 186). This protection was invoked by petitioners in the Circuit Court of Appeals (Tr. of Rec. pps. 346 to 356 inclusive) as is now invoked in this Court. (Petition for Writ of Certiorari, Specifications of Error, pps. 8, 9, and 10.).

We think the conclusion follows that counties, under the decisions of this Court, and inferior Federal courts, stand like private corporations when the jurisdiction of the Federal courts is invoked against them. No reason is perceived why they should not, since they are bodies corporate exercising many powers and functions similar to those exercised by natural persons and private corporations.

Insofar as these proceedings affect the petitioners, as counties, it has been demonstrated in Petitioners' Brief in Support of the Petition for Writ of Certiorari that the tax, and the lien of the tax, for the year 1935 was levied and impressed before the effective date of the Act of March 20, 1936, and that the lien of the tax for the year 1936 was impressed before the effective date of that Act. (Petition for Writ of Certiorari, pps. 5, 6. See, also, decision of the Circuit Court of Appeals, 130 Fed. (2d) 356.)

These taxes, and the liens of taxes, are things of value to Maricopa County and Pima County which the Act of March 20, 1936 seeks to destroy. The right to them is no less valuable than a right flowing from any other exercised power which may be questioned in the Federal District Court of Arizona. We think no controlling distinction, for the purpose of the decision of this case, exists between the matters litigated in the decisions heretofore cited and those litigated here. Counties, by their constituted nature, are cor-

porations although they exercise a public function, and since they are suable in that capacity in the Federal courts, then once they are sued there, equality of justice would seem to dictate that they stand clothed with every defense permitted by law to all suitors, including the right to invoke the protection of the Fifth Amendment.

III.

PETITIONERS HEREIN, WHO ARE COUNTIES, MAY INVOKE THE PROTECTION OF THE TENTH AMENDMENT

The Supreme Court of Arizona has held that statutes of limitation may not be invoked against the county under the rule of *nullum tempus occurrit regi*.

City of Bisbee vs. Cochise County,
52 Ariz. 1, 78 Pac. (2d) 982.

By that decision the Supreme Court of Arizona applied the same rule to counties as is applied to the state so far as they are freed from statutes of limitation. The decision rests upon the holding that counties in Arizona are created by virtue of the sovereignty resting in the state; that they draw all their powers from that sovereignty and are created for the sole purpose of exercising the limited part of sovereignty delegated to them.

The important feature of the foregoing decision of the Supreme Court of Arizona, insofar as it applies to this case, is that a county of Arizona exercises the power of taxation only by virtue of the power of sovereignty, and that when the tax collected by the county is applied in the execution of its governmental functions, necessarily it is so applied for the benefit of the people of the state as a whole, and that although the exercise of the power of taxation by the county is

exercised in its name, nevertheless the use of the tax involves and affects the state itself.

No reason is perceived why the petitioners here, as counties, if we look to their origin and present status, do not exercise that measure of sovereignty which entitles them to invoke the protection of the Tenth Amendment. Counties are the oldest units of the American Government. Before the adoption of the Constitution they were the chief organs of local government by which the people exercised the administration of governmental affairs, and in many respects their primary functions have been translated to the modern county.

McQuillan on Municipal Corporations, (2nd Ed.) Sec. 88, p. 248.

The sovereignty of the State of Arizona is exercised in a large part by the several counties, and while exercising their sovereign power in laying and collecting taxes, counties are, in effect, the state itself.

City of Bisbee vs. Cochise County, supra.
Dillon on Municipal Corporations, (5th Ed.) Sec. 35, p. 64.

The impairment of a county tax, to the extent it impairs the functions of the county government, in like respect impairs the administration of the state government. As a result, we think, it follows that the relationship which the counties in Arizona bear to the state, particularly in respect of matters of taxation, authorizes them to invoke the protection of the Tenth Amendment when they are sued in the Federal District Court.

CONCLUSION

As disclosed in petitioners' Brief in Support of the Petition for Writ of Certiorari (p. 27) the respondent bank pleads that it stands ready to pay as taxes such further sums over and above the tenders which it made as may be found to be just and equitable. (R. 56, 124; R. 239, 308).

Accordingly, it is again respectfully urged that the judgments of the Circuit Court of Appeals, and of the District Court, be reversed with directions to enter judgments for petitioners for the full amount of the taxes levied and to foreclose the liens thereof.

Respectfully submitted,

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Appendix Follows

APPENDIX

Section 17-203, Arizona Code Annotated, 1939:

"17-203. *Industrial pursuit—Election to determine bond issue.*—The board of supervisors may, and upon petition of fifteen (15) per cent of the property taxpayers of the county, who are also qualified electors, shall call an election of such taxpayers to determine whether the bonds of said county shall be issued and sold for the purpose of constructing, installing and operating an industrial plant for the manufacture of materials or commodities for use in the construction of public highways or other public works of the county. Whenever the bonds of any county shall be authorized at said election and issued and sold, then said county shall have power to own or lease and operate the plants for which said bonds were so authorized, in any county of the state. Said election shall be called and conducted and the results returned and canvassed as in other county bond elections. The bonds shall be sold by the board in the same manner as other county bonds. The proceeds shall be placed in a special fund in the county treasury, as the 'County Industrial Pursuits Fund' and shall be used only for the purposes for which said bonds were authorized."

Section 17-309, Arizona Code Annotated, 1939:

"17-309. *Powers of board enumerated.* — The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

"1. Supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, management or disbursement of the public revenues, see that they faithfully perform their duties, direct prosecutions for delinquencies, and, when necessary, require renewals

of their official bonds and make reports, and present their books and accounts for inspection;

"2. Divide the counties into such districts or precincts as required by law, change the same and create others as convenience requires;

"3. Establish, abolish and change electric precincts, and appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof;

"4. Lay out, maintain, control and manage public roads, ferries and bridges within the county and levy such tax therefor authorized by law;

"5. Provide for the care and maintenance of the indigent, sick and the dependent poor of the county; erect and maintain homes and hospitals therefor; provide in their discretion a farm in connection with the county hospital, and make regulations for working the same;

"6. Provide suitable rooms for county purposes;

"7. Purchase, receive by donation, or lease any real or personal property necessary for the use of the county prison, take care of, manage and control the same, but no purchase of real property may be made unless the value has been previously estimated by three (3) disinterested citizens of the county, appointed by the board for that purpose, and no more than the appraised value may be paid therefor;

"8. Cause to be erected and furnished a courthouse, jail, hospital and such other buildings as necessary, and construct and establish a branch jail, when necessary, at a point distant from the county seat;

"9. Sell at public auction at the courthouse door, after thirty (30) days previous notice given by publication in a newspaper of the county, and

convey to the highest bidder, for cash, any property belonging to the county and by the board deemed not needful for the use of the county, paying the proceeds into the county treasury for the use of the county;

"10. Examine and exhibit the accounts of all officers having the care, management, collection or disbursement of money belonging to the county, or appropriated by law or otherwise for its use and benefit;

"11. Examine, settle and allow all accounts legally chargeable against the county, and order warrants to be drawn on the county treasurer therefor, and provide for the issuing of the same;

"12. Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, not exceeding two dollars ($2.00) on every hundred ($100) of value for any one (1) year; and levy such other taxes as are required to be levied by law;

"13. Equalize assessments;

"14. Direct and control the prosecution and defense of all actions to which the county is a party, and compromise the same;

"15. Insure the county buildings in the name of and for the benefit of the county;

"16. Fill by appointment all vacancies occurring in county or precinct offices;

"17. Adopt provisions for the preservation of the health of their respective counties as necessary, and provide for the expenses thereof;

"18. Contract for the county printing and advertising, and provide books and stationery for county officers;

"19. Provide for the rebinding of any county records, or, if necessary, the transcribing of any records;

"20. Make and enforce such rules and regulations for the government of their body, the preservation of order and the transaction of business as necessary;

"21. Adopt a seal for the board, a description and impression whereof must be filed by the clerk in the office of the county recorder, and secretary of state;

"22. Do and perform all other acts and things necessary to the full discharge of the duties as the legislative authority of the county government; but a supervisor shall not vote upon any measure in which he, or any member of his family, or partner, may be pecuniarily interested;

"23. Make and enforce all local, police, sanitary and other regulations not in conflict with general laws;

"24. Establish, maintain and conduct, or aid in establishing, maintaining and conducting public aviation fields, and purchase, receive by donation, or lease any property necessary therefor; may lease or sell the same to the United States; or exchange lands acquired pursuant hereto for other lands, or act in conjunction with the United States in maintaining, managing and conducting the same. When leases are made to the United States or to any department thereof the lease may provide for a nominal rental. When any such property be not needed for the purposes herein mentioned it shall be sold by the board and the proceeds paid into the general fund of the county;

"25. Acquire and hold property for the use of county fairs and conduct, take care of and manage the same;

"26. Authorize the sheriff to offer a reward, not exceeding five hundred dollars ($500) in one (1) case, for the apprehension of any person convicted of or charged with crime;

"27. Contract for the transportation of insane persons from their county to the State Hospital for the Insane, or direct the sheriff to transport such persons and allow the expenses thereof;

"28. Bury deceased indigents and mark their graves with a stone, giving the name, age, and date of death;

"29. Sell or grant to the United States the title or interest of the county in any toll road or toll train in or partly within a national park, upon such terms and considerations as may be agreed upon by the board and the secretary of the interior of the United States;

"30. County boards of supervisors are hereby authorized and empowered to enter into agreements for acquiring rights of way, construction, reconstruction or maintenance of highways in their respective counties with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of congress.

"Agreements heretofore entered into by boards of supervisors with the government of the United States for acquiring rights of way, construction, reconstruction or maintenance of highways in their respective counties are hereby validated and confirmed. The boards of supervisors may pay as rewards for the destruction of wild animals in their counties, as follows: Lobos or timber wolves, mountain lions, pumas or panthers, ten dollars ($10.00) each; coyotes, two dollars ($2.00) each; raccoons, twenty-five cents (25c) each; lynx and wildcats, one dollar ($1.00) each; and jackrabbits, gophers and prairie dogs, five cents (5c) each. The person claiming the reward shall produce the entire hide

of such animals, except jackrabbits, the ears of which shall be sufficient, before the board of the county in which such animal was killed. When the hide of such animal is produced the board shall mark or mutilate same in such manner that the bounty can not again be collected, but in such a way as to injure as little as possible the commercial value of said hide, which shall then become the property of the county. The board shall examine such persons and other witnesses on oath, touching the time when, and the place where such animal was taken and killed, and the affidavit of at least one (1) person other than the claimant shall be filed stating that he saw the carcass of the animal freshly killed, in the possession of the claimant and in the county, the date thereof, and a description of the animal.

"Each member, and the clerk, may administer oaths, but they shall charge no fees therefor. (R. S. 1901, Secs. 973, 1000, 1012, 1027, 1044; Laws 1912, ch. 62, Sec. 1, p. 287; 1913, Secs. 2418, 2447, 2457, 2473, 2476, 2477; Laws 1927, ch. 55, Secs. 1, 2, 3, p. 125; 1927 (4th S. S.), ch. 26, Sec. 1, p. 188; cons. & rev., R. C. 1928, Sec. 774; Laws 1931 (1st S. S.), ch. 7, Sec. 1, p. 14.)"

No. 449

In the Supreme Court of the United States

OCTOBER TERM, 1942

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer, and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector, of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a national banking association,

Respondent.

BRIEF OF PETITIONERS IN REPLY TO BRIEF OF RESPONDENT

On Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

REPUBLIC AND GAZETTE COMMERCIAL PRINTERY, PHOENIX

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No. 449

In the Supreme Court of the United States

OCTOBER TERM, 1942

MARICOPA COUNTY, ARIZONA, et al,
Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a national banking association,
Respondent.

BRIEF OF PETITIONERS IN REPLY TO BRIEF OF RESPONDENT

We will use the same heading symbols as are found in respondent's brief last filed.

A. 1. (a) (p. 5) Conceding that the assessment, levy and collection of taxes for the state and all of its subdivisions are entrusted to county officers, and that all such taxes when collected are distributed to the state, counties, school districts, and other taxing districts, respondent nevertheless contends that county treasurers in collecting county taxes do not act as agents of their counties.

By Section 73-701, A. C. A. 1939, it is provided: "The county treasurer shall be ex-officio tax collector." By the following section it is provided: "The county treasurer as tax collector shall collect all state and county taxes and apportion the same to the several funds at the end of each month." By this same section he is required to post a bond for the faithful performance of his duties. By Section 73-703, A. C. A. 1939, it is provided: "The county treasurer may at any time after receiving the roll,collect, by distraint and sale if not otherwise collected, the taxes due on personal property." By Section 17-717, A. C. A. 1939, it is provided: "The treasurer shall keep all money belonging to the state, or to the county, in his own possession until disbursed according to law." Section 17-701 (5), A. C. A. 1939, provides that the county treasurer shall "disburse the county money only on county warrants, issued by the board of supervisors, signed by the chairman and clerk of such board, or as provided by law." As to state moneys, Section 17-714, A. C. A. 1939, provides:

> "Upon the receipt of an order from the state treasurer requiring the money in the county treasury belonging to the state or collected for it, to be transmitted to the state treasury in the manner prescribed by law, the county treasurer shall within ten (10) days thereafter transmit the same in the manner directed by the state treasurer, and as provided by law, and such transmittal shall be at the risk of the state, if sent as the state treasurer directed."

Our views are in accord with the construction this Court has placed upon these statutes.

Ex parte Bransford, 310 U. S. 354, 84 L. Ed. 1249, 60 Sup. Ct. Rep. 947.

The two cases cited by respondent:

Conway vs. Mosher,
55 Ariz. 307, 311;
101 Pac. (2d) 209;

Yuma County vs. Arizona
56 Ariz. 310, 312;
107 Pac. (2d) 374;

hold that a sale of real estate under the provisions of Article 8, A. C. A. 1939, Collection of Delinquent Taxes, by the county treasurer for state and county taxes to the state passes title to the state and that the county's interest is in the proceeds which the state may later derive from redemption or disposition of the property. This holding is based upon the first section under that article, 73-801, which provides:

> Taxes upon real estate, if unpaid, shall become delinquent on the first Monday in November and the first Monday in May of each year, and the county treasurer shall enforce the lien of the state upon such real estate, as provided herein."

These cases do not stand for the proposition asserted by the respondent, namely, that the county treasurer is not the agent of his county for the collection of county taxes. They are confined to the single proposition that a sale under the procedure outlined in Article 8 of real estate to the State of Arizona results in a passing of title to the State of Arizona.

The Conway case was reheard and the opinion on the rehearing appears in 55 Ariz. 467, 103 Pac. (2d) 465, see heading 5. The court there points out that that action was one to quiet title to real estate:

> "The action was not one to determine whether the county had an interest in the taxes secured by the

lien. The county may be interested in the taxes, but it has no interest whatever in the lien securing the taxes. That is the state's."

And in this case we are considering the taxes on personal property. Section 73-506, A. C. A. 1939 is set forth in our petition for a writ of certiorari, page 13 of the appendix. It provides for a lien of all taxes on real and personal property, as of January 1st of the current year. And, more to the point, Section 73-205, A. C. A. 1939, which outlines the procedure for the assessment of taxes on bank stock, provides:

"The taxes due thereon shal be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends, etc."

See appendix to petition for writ of certiorari, page 9.

Whether the counties have a lien or not is not material. They have a right to taxes. The county assessor may at any time after the first of the year distrain and sell personal property for taxes if he believes the taxpayer is not possessed of sufficient real property to protect the tax, using the rate of the preceding year, if necessary. Sec. 73-410, A. C. A. 1939.* As we have pointed out, the county treasurer has similar power to distrain and sell personal property. Sec. 73-703, A. C. A. 1939.** It is because of that very power that the injunctions are against the county treasurers.

A. 1. (b) (p. 7) Here it is asserted that counties can acquire no vested rights independent of their creator, the state.

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* This Section is printed in the Appendix at page II.

** This Section is printed in the Appendix at page I.

The numerous cases cited by respondent stand for the proposition that the federal courts will not entertain a challenge by a part of the state against the entire state on the ground that the latter has deprived the former of its property without due process of law or violated the obligation of a contract between the two. The reason is self-evident. The creature of a state is in no position to challenge the acts of its creator on the basis of a constitutional guarantee directed against state action.

Trenton vs. New Jersey,
262 U. S. 182;
67 L. Ed. 937;
43 Sup. Ct. Rep., 534.

Williams vs. Baltimore,
289 U. S. 36;
77 L. Ed. 1015;
53 Sup. Ct. Rep. 431

We have no such case here. Neither the State of Arizona nor any of its counties or legal subdivisions is a creature of the United States Government.

The judgments are that the county taxes are void (Tr. 265, 332). It would seem appropriate that the counties themselves may challenge the validity of those judgments.

A. 2. (a) (p. 9) It is said that the county treasurers as individuals have no standing. This is conceded.

A. 2. (b) (p. 10) Under this heading respondent contends that county treasurers while agents of the State of Arizona are nevertheless without authority to raise the constitutional questions here presented.

The contention is reduced to this: that while the county treasurers can be sued as agents of the state, they have no right to defend in this court the interests of their principal.

The point of the argument is that county treasurers do not have the proper legal representation before this court. But the case they cite,

State vs. Hendricks,
———Ariz.———;
124 Pac. (2d) 768;

is to the contrary. In that case it was held that a state auditor might bring an action in the name of the state at the relation of her office and prosecute it through a private attorney whom she had employed.

The burden of that case and the other one cited by respondent,

Crane vs. Frohmiller,
45 Ariz. 490, 502;
45 Pac. (2d) 955;

is that one acting for the state may not use any state moneys for the employment of private attorneys where the attorney general is empowered to act—nothing more.

As agents of the State of Arizona these county treasurers are duty bound to present to this court the view which they entertain, to-wit, that the Act of March 20, 1936, is void insofar as it undertakes to destroy prior taxes, and they have the right to present their views to this court by any member of the bar of this court.

There is no rule of law or statute that confines the assertion in this court of states' rights to state attorneys general.

Coleman vs. Miller,
307 U. S. 433;
83 L. Ed. 1385;
59 Sup. Ct. Rep. 972;
122 A. L. R. 695.

And if the county treasurers cannot defend the state's rights in this court because the attorney general has not associated himself as counsel for the petitioners, what is to be said of the counties themselves—formal parties defendant to this action? In a case holding that a taxpayer may recover of a county taxes, state and county, illegally collected from him, the Arizona Supreme Court stated that the county "is constituted the agent of the state to collect the taxes for the state, the county, and school districts, and the law has made it responsible to the taxpayer for a tax illegally collected."

Maricopa County vs. Hodgin, 46 Ariz. 247,
50 Pac. (2d) 15, 101 A. L. R. 793.

Must a county also be denied its right to appear on behalf of the state unless it can persuade the attorney general to assist in its representation?

Pima County employed the special counsel who here appear to assist the county attorney in this litigation. That contract was sustained by the Arizona Supreme Court.

Pima County vs. Grossetta, 54 Ariz. 530, 539;
97 Pac. (2d) 538.

In any event the point is without merit because the attorney general appeared in the district court for all the defendants and signed the answers filed on their behalf which raised the constitutional questions now asserted. (Tr. 168, 186). The attorney general has also entered his appearance in this court.

A. 3. (p. 13) It may be conceded that if the counties, which are before the bar of this court as such, are in no position to asert their claims to the taxes here involved, then the boards of supervisors have no such right. Nevertheless, they were made parties defendant to these suits and in view of their responsibility to prepare a budget of the county expenses and supervise the assessment, collection and disbursement thereof, it would seem that they have a right on behalf of their counties to claim that the taxes in question are legally collectible.

Section 17-309, A. C. A. 1939, provides:

> "The Board of Supervisors under such limitations and restrictions as are prescribed by law may*** (14) direct and control the prosecution and defense of all actions to which the county is a party, and compromise the same."

The county may appear either by its county attorney or special counsel approved by the Board of Supervisors or both.

Pima County vs. Grossetta, supra.

A. 4. (a) (b) (c) (d) (e) (f) (g) (p. 13, 14, 15, 16, 17, 18).

These points are covered by briefs heretofore filed by petitioners. (a) For cases that the United States is a person within the meaning of the Fifth Amend-

ment, see pages 20, 21 of Brief on Petition for Certiorari and pages 6 to 13 of our Supplemental Brief. (b) The cases do hold that a part of a state may not, in the federal courts at least, challenge the state itself under the due process clause of the Fourteenth Amendment. We have already stated the reason given by the courts for this holding. Trenton vs. New Jersey, supra. A part of a state (and a fortiori the state itself) may nevertheless, as against the United States, rely upon the compensation clause of the Fifth Amendment, though its language be less appropriate to public bodies than the due process clause of the same amendment.

Wayne County vs. U. S.,
53 Ct. Cl. 417;
Affirmed 252 U. S. 574;
40 Sup. Ct. Rep. 394;
64 L. Ed. 723.

(c) (d) (e) (f) and (g) (p. 14, 15, 16, 17, 18) throw, we submit, very little light on the problem. The earliest direct expression by the Supreme Court on the right of a state to challenge the constitutionality of an act of Congress on the ground that it deprived the state of its rights is found in

Pennsylvania vs. Wheeling Bridge Co.,
18 Howard 421;
15 L. Ed. 435.

The majority held that the judgment for costs could not be destroyed by Congress and, by way of careful dicta, that had the state recovered a judgment for damages rather than an injunction, necessarily executory in its nature, Congress would have been powerless to destroy such judgment.

A. 5. (p. 22) Under the Tenth Amendment, the power of the state which is reserved is that of taxation of any property within its taxable jurisdiction. It is undenied that the personal property here taxed was not taxable by the state until Congress gave its consent. Once, however, the power of the state attached, it was complete and not subject to withdrawal by Congress. That Congress could by indirection accomplish such withdrawal—disallow suit to collect such taxes—assuming such power in this case, (see contra Bank of U. S. vs. Planters' Bank of Georgia, 9 Wheat. 904; 6 L. Ed. 244)—is of no consequence. Congress has not withdrawn the consent to sue these institutions.

B. 1. (p. 27) In our opening brief (page 17) we discussed the contention of respondent that the consent to this taxation was a mere withdrawable gratuity. We see no need for a further discussion.

B. 2. (p. 30) The contention is that by a mere inadvertence Congress overlooked an express withdrawal of the right to tax this preferred stock. This Court in its careful and unanimous decision in

> Baltimore National Bank vs.
> State Tax Commission,
> 297 U. S. 209;
> 56 Sup. Ct. Rep. 417;
> 80 L. Ed. 586.

applied the appropriate canons of interpretation for the determination of the purpose behind the act, and held that Congress had not intended to withdraw the consent to tax.

B. 3. (p. 33) That the act is retroactive is obvious from its terms.

B. 4. (p. 34) This point is discussed in our opening brief at page 26.

Respondent's plea for consideration because if it pays the taxes it cannot collect them back from Reconstruction Finance Corporation is not very pertinent; nor is it a correct view of the law. If the liens of these taxes are valid and the respondent bank pays the taxes, the bank then has recourse against Reconstruction Finance Corporation by virtue of its lien, (Sec. 73-205 Arizona Code Annotated, 1939, set forth at pages 8 and 9 of Petitioners' Brief in Support of Petition for Writ of Certiorari) and respondent is subrogated to the right of the state against Reconstruction Finance Corporation. (Sec. 73-205, supra).

See also:

Brophy vs. Powell, ———Ariz.———, 121 Pac. (2d) 647, 655.

B. 5. (p. 37) The decision of the Arizona Territorial Supreme Court in

Territory vs. Perrin, 9 Ariz. 316, 83 Pac. 361,

was based on its conception of general principles of law. It is directly contrary to the views of the United States Supreme Court as announced in

U. S. vs. Alabama, 313 U. S. 274, 85 L. Ed. 1327, 61 Sup. Ct. Rep. 1011,

and consequently lost its value as a precedent, and further because the Supreme Court of the territory of Arizona, at the time of the rendition of the decision in the case of *Territory vs. Perrin,* supra, was a member of the federal judicial system. Furthermore, it is

at variance with the Arizona State Supreme Court's decision in

Gietz vs. Webster, 46 Ariz. 261,
50 Pac. (2d) 573.

In the last part of the conclusion of respondent's brief is found the following statement:

> "These appellants originally did not deny the validity of that act; they first sought to avoid its effect by denying its application, (Transcript of Record, 154-155, 172-173); and now, on this appeal, are so reluctant to release their tentative grip upon the forced gift that they change their position to deny the power of the giver to limit the effect of his own gift."

This statement is less accurate than the facts reveal. These petitioners pleaded in the District Court, by way of defense, that the Act of March 20, 1936, was unconstitutional and void in its application to the taxes levied upon respondent's preferred stock. (Tr. 167, 185).

The conclusions of law of the trial judge recite that Maricopa County and Pima County taxed respondent's preferred capital stock owned by Reconstruction Finance Corporation. (Tr. 258, 259 and 325, 326).

The Circuit Court of Appeals (130 Fed. (2d) 356) confines its decision to the validity of the taxes upon respondent's shares of preferred capital stock while in the ownership of Reconstruction Finance Corporation.

Thus it appears that from the inception of this litigation, until now, petitioners have invoked the protection of the Federal Constitution against the retro-

active feature of the Act of March 20, 1936 in its application to taxes levied upon respondent's preferred shares of capital stock while in the ownership of Reconstruction Finance Corporation.

Respectfully submitted,

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Appendix Follows

APPENDIX

Sec. 73-703 A. C. A. 1939:

"73-703. *Collection of tax on personal property—Sale and proceedings.*—The county treasurer may at any time after receiving the roll, collect, by distraint and sale if not otherwise collected, the taxes due on personal property. The sale must be at public auction, after one (1) week's notice of the time and place thereof, given by publication in a newspaper in the county, or by posting notices thereof in three (3) public places therein, and of a sufficient amount of the property thereof to pay the taxes, fees, and costs. For seizing and selling personal property, the treasurer may in each case charge three dollars ($3.00) and the same mileage as allowed by law to the sheriff in serving civil process. On payment of the purchase price and the delivery of the property with a bill of sale, the title thereto vests in the purchaser; all excess over taxes, fees, and costs, shall be returned to the owner of the property sold, and until claimed shall be deposited in the county treasury, subject to the order of the owner. Before seizing the rolling stock of a railroad company, when the real estate of such company within said county is not sufficient to secure the payment of the tax on both the real and personal property assessed to said company, the treasurer shall notify one of the agents, conductors, or persons in charge of a station or freight depot of said company, that unless the tax be paid within ten (10) days thereafter, he will distrain the personal property belonging to said company for the taxes due thereon.

"If the county treasurer has reason to believe that any person assesed with taxes upon personal property is about to remove such property from the county, or to sell, conceal, or other-

wise dispose of the same, he shall at once after such taxes are due, collect the same with costs and charges, by distraint and sale of any personal property of such person in the manner herein provided."

Sec. 73-410 A. C. A. 1939:

"73-410. *Personal property tax paid when assessed — Enforcing payment.* — The county assessor, when he assesses the property of any person, not owning real estate within the county of sufficient value in the assesor's judgment to pay taxes on both the real and the personal property of such person, shall immediately collect the taxes on the personal property so assessed, and if the owner shall neglect or refuse to pay, the assessor shall seize sufficient of said personal property to satisfy the taxes and costs, and shall post a notice of such seizure, with a description of the property, in three (3) public places in the county, one (1) of which shall be in the precinct where it is seized, and shall, at the expiration of three (3) days sell at public auction, at the time and place mentioned in the notice, to the highest bidder, for cash, a sufficient quantity of said property to pay the taxes and expenses incurred and issue to the purchaser a certificate of sale. If the owner shall give bond with sufficient security, to be approved by the assessor, and sufficient to cover the amount of the taxes due and the costs incident to seizure, the said property shall be released to said owner, and for this service the assessor shall be paid a fee of three dollars ($3.00) and mileage. If the asesor is unable to find, seize, and sell sufficient of the property of such person to pay the taxes and costs of sale, and such person shall neglect or refuse, on request of the assessor, to pay the same, or neglect or refuse to turn out property sufficient

to pay such taxes and costs of sale, the assessor shall file in a court having jurisdiction, an affidavit showing the assessment, the amount of taxes, the inability to find and seize property sufficient to pay the same and costs of sale, and the neglect or refusal to pay or turn out property sufficient to pay the same and costs of sale; the court or justice shall thereupon issue a citation, to be served as a summons, ordering the party to appear at a time within five (5) days, to be fixed by the court, to answer, under oath, concerning his property. If it shall appear that such party has any money, goods, chattels, or effects to satisfy such taxes and costs of sale, and also costs of proceeding on the citation, the court shall order the party to deliver to the assessor such property, and if the party neglect or refuse to answer the citation, or the order to deliver such property, he shall be in contempt. For such services such fees shall be allowed as for similar services in civil cases, to be collected only from parties owing such taxes, and be paid into the county treasury. In other respects than herein provided, the proceedings shall be conducted as provided in proceedings supplemental to execution. If it appears from the affidavit of the assessor that such person is about to abscond from the county, or is about to convey his property with intent fraudulently to evade the payment of such taxes, the citation may direct the officer serving the same to arrest such party, and bring such party before the court. It shall be unlawful for a party served with the citation to sell or transfer his property or effects so as to defeat the collection of taxes or costs, and any person so doing shall be guilty of a misdemeanor. Should the said taxes be not collected by such process, then no liability shall attach to the assessor. All excesses over the taxes and costs of the proceeds of any

such sale must be returned to the owner, and until claimed, must be deposited in the hands of the county treasurer, subject to the order of the owner. The unsold portion of any property may be left at the place of sale at the risk of the owner. The assessor shall be governed as to the amount of taxes to be collected by him on the aforesaid personal property by the state and county rate of the previous year.

"The assessor, on the first Monday of each month, shall make a settlement with the county treasurer and pay into the treasury all moneys collected by him for such taxes during the preceding month. The assessor shall, as soon as he has collected the taxes on such personal property, give the owner a receipt therefor and thereafter mark the same paid, together with the amount opposite the name of the owner in the assessment roll, and in an assessor's cash book. Personal property in transit, or temporarily in a county, shall be assessed where the owner is domiciled."

RESPONDENT'S BRIEF IN OPPO-SITION

No. 449

In the Supreme Court of the United States

OCTOBER TERM, 1942

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer, and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH, as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; CHARLES M. TAYLOR, as County Assessor of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a corporation,

Respondent.

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent.

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS DELIVERED

The trial court wrote no opinion.

The opinion of the Circuit Court of Appeals does not yet appear in the reports. It is printed in the Transcript of Record, pages 381-387.

JURISDICTION OF SUPREME COURT

It is admitted that this court has jurisdiction over this case on Certiorari. It is submitted, however, that no ground for review is presented under Subdivision 5 of Rule 38 of this court.

STATEMENT OF CASE

Respondent accepts the summary statement of matter involved on pages 3-11 of the petition for writ of certiorari.

ARGUMENT

Question presented by Petition no longer of Public Interest.

Validity of Act of Congress March 20, 1936 Recognized by all except Petitioners.

Petitioners invoke the jurisdiction of this Court on certiorari upon the ground that "the decision of the Circuit Court of Appeals was on an important question of federal law which has not been but should be settled by this Court, to-wit: Whether the Congress can constitutionally destroy by retrospective legislation a state tax lawful when levied and levied with the consent of the Congress upon the preferred capital stock of a national banking association while in the ownership of Reconstruction Finance Corporation." Petition for writ of certiorari p. 10.

We call the Court's attention to the fact that petitioners admit the validity of the provisions of the Act of Congress of March 20, 1936, which are prospective in their operation and attack only those provisions of said act which operate retrospectively.

The taxes which petitioners seek to uphold were levied in the years 1935 and 1936. It is obvious that the questions presented by these cases must have arisen in

many states of the Union during those years and that in the subsequent years from 1937 to the present time the question cannot have arisen for during said years the taxes have been levied under the prospective provisions of the statute, the validity of which is admitted. Only two cases are found in the reports in which the question under consideration has been raised. These are Reconstruction Finance Corporation vs. Elder, 26 Federal Supplement 772, in which the validity of the Act of Congress was upheld in its entirety and First National Bank vs. State Tax Commission, 43 N.M. 307, 92 P. (2) 987, in which case a state tax for the year 1934, levied upon the preferred stock of the plaintiff in that case, while held by Reconstruction Finance Corporation, was held void and petition for writ of certiorari to this Court was denied without opinion, 308 U.S. 515, 84 L. ed. 439, 60 S. Ct. Rep. 172.

The fact that Reconstructon Finance Corporation is a governmental agency and its property is properly exempted from taxation by Congress as being the property of the United States is recognized generally by the state courts.

State Tax Commission vs. Baltimore National Bank, 199 Atl. 119; 174 Md. 403.

City of Clifton vs. State Board of Tax Appeals, 17 Atl. (2) 476.

Iowa Des Moines National Bank vs. Des Moines, 288 N.W. 409

See also:

Ex-Parte Bransford, 310 U.S. 354; 84 L. ed. 1249; 60 S.Ct. Rep. 947

in which this Court was called upon to determine

whether one of the cases involved in the instant petition for certiorari was a three judge case.

Petitioners are in the position of asserting the unconstitutionality of the retrospective provisions of a statute which have been acquiesced in by the various taxing authorities of the other states of the Union and, indeed, by the State Tax Commission and the Boards of Supervisors of the other counties of their own state that have not joined in their appeal so that they may truly be said to invoke the jurisdiction of this Court to set aside a portion of the Act of Congress in question for their exclusive benefit and for the purpose of recovering a substantial amount from the treasury of the United States upon a ground which all others affected thereby have not insisted upon at least to the extent of coming to this Court. What might have been a public question, if brought seasonably to this Court when the act was first passed and when this Court might appropriately have undertaken to determine the question as one of public interest, is today merely a private claim on behalf of two counties of the State of Arizona, that are striving to get a special advantage which others have not received. While undoubtedly petitioners have the right to their day in court, that right has been adequately recognized by the hearings granted them in the District Court and the Circuit Court of Appeals, both of which found no merit in their contentions.

ON THE MERITS

Question of Applicability of 5th Amendment to States and Their Subdivisions Not Necessary to be Decided.

Case Decided Upon Ground That Congress May Withdraw Privilege or Gratuity at Any Time.

Act of Congress March 20, 1936, is a Curative Act to Correct Inadvertent Error in Legislation.

Petitioners rest their case upon alleged violation by the provisions of the statute in question of the 5th Amendment to the Constitution. The Circuit Court of Appeals did not find it necessary to consider the application of said amendment to states and subdivisions of states but disposed of the case upon the ground that it was settled by the decisions of this Court that since shares of stock in national banks were subject to state taxation only by the consent of Congress taxation of such shares with the consent of Congress was a privilege or gratuity that might be withdrawn at any time before collection of the tax and that when so withdrawn the right to such collection ceased. The Court followed in this respect the opinion of the District Court of Georgia in the case of Reconstruction Finance Corporation vs. Elder, 26 F. Supp. 772, which decision is amply supported by the decisions of this Court.

Shares of stocks of national banks can be taxed by the states only with the consent of Congress.

Van Allen vs. Assessors, 3 Wallace 573; 18 L. ed. 229.

Bradley vs. Illinois, 4 Wallace 459; 18 L. ed. 433.

People vs. Weaver, 100 U.S. 539, 543; 25 L. ed. 705.

Owensboro National Bank vs. Owensboro, 173 U.S. 664; 19 S. Ct. Rep. 537; 43 L. ed. 850.

Bank of California vs. Richardson, 248 U.S. 476, 482-484; 39 S. Ct. Rep. 165; 63 L. ed. 372.

First National Bank v. Adams, 258 U.S. 362, 364; 42 S. Ct. Rep. 362; 66 L. ed. 661.

Des Moines National Bank v. Fairweather, 263 U.S. 103, 106; 44 S. Ct. Rep. 23; 68 L. ed. 191

First National Bank vs. Anderson, 269 U.S. 341; 347; 46 S. Ct. Rep. 135; 70 L. ed. 295.

First National Bank vs. Hartford, 273 U.S. 548; 47 S. Ct. Rep. 462; 71 L. ed. 767.

Baltimore National Bank vs. State Tax Commission, 297 U.S. 209; 56 S. Ct. Rep. 417; 80 L. ed. 586

A privilege or gratuity granted or conferred by the United States may be withdrawn at any time by act of Congress.

Lynch vs. U. S., 292 U.S. 571; 78 L. ed. 1434, 1439; 54 S.Ct.Rep. 840

De Groot vs. U. S., 5 Wallace 419; 72 U.S. 700; 18 L. ed. 419

U. S. vs. Teller, 107 U.S. 64, 68; 27 L. ed. 352

Frisbie vs. U. S., 157 U.S. 160, 162; 39 L. ed. 657

U. S. vs. Cook, 257 U.S. 523; 66 L. ed. 350, 351; 42 S. Ct. Rep. 200

Van Horn vs. Hines, 122 F. (2) 207; Certiorari denied, 62 S. Ct. Rep. 360; 86 L. ed.257

Salt Co. vs. E. Saginaw, 13 Wallace 373; 20 L. ed. 251; 80 U.S. 611

Dodge vs. Board of Education, 302 U.S. 74; 82 L. ed. 57; 58 S.Ct. Rep. 98

Petitioners seek to avoid the force of the above authorities by contending that the cases permitting withdrawal of privileges or gratuities do not apply because withdrawal of the consent to tax after the lien of the tax has attached may interfere with the orderly collection of the state's revenue. That is an argument more properly addressed to Congress than to the courts. As pointed out by the above cases the right to tax the property of the United States is withdrawn from the states by the Federal Constitution.

In creating Reconstruction Finance Corporation, Congress did not set up an organization out of which the United States was to make a profit. The purpose of that Act was to assist the several states and the citizens thereof to survive the depression. The purpose of the particular Act authorizing Reconstruction Finance Corporation to purchase preferred stock of national banks is well stated in the extract from Judge Offutt's opinion in the case of Tax Commission v. Baltimore National Bank, supra, quoted in the appendix to this brief.

The consent of Congress to state taxation of preferred bank stock held by Reconstruction Finance Corporation found to have been granted by the decision of this court in Baltimore National Bank v. State Tax Commission, 297 U.S. 209; 56 S. Ct. R. 417; 80 L. ed. 586, in fact operated as the grant of a double gratuity. The Federal Government first supplied the use of the funds with which to purchase the shares and, second, permitted the states to tax the shares purchased with the funds advanced for that particular purpose. Thus the United States first put the money into the local communities for the purpose of saving those communities from all the evils of closed banks and second consented that the local authorities tax this money which had been put into the communities for their benefit. The granting of this second gratuity through consent to state and local taxation was due wholly to the failure of Congress to have in mind or correctly apprehend the effect of its former legislation permitting the taxation of shares of stock of national banks.

The Circuit Court of Appeals might well have mentioned the aforesaid oversight of Congress as additional ground for upholding the validity of the Act of March

20, 1936, as was done by the District Court of the Northern Division of Georgia in the case of Reconstruction Finance Corporation vs. Elder, supra, in which that court stated:

> "In my opinion, it is clear that the privilege to tax such stock standing in the name of Recontsruction Finance Corporation, a purely governmental agency, resulted from mere oversight on the part of Congress and that it was never the intention of Congress to permit the taxation of such shares when so owned; that this oversight was corrected as soon as possible after the Supreme Court decision, supra, by the passage of the Act of March 20, 1936 which expressly, and without ambiguity, undertakes to annul such privilege with respect to present, future and past assessments."

That the purpose of the Act of March 20, 1936, was to correct an inadvertent omission of Congress is made clear from the statement of the history of the Act inserted in the appendix hereto.

In view of the history of said Act of March 20, 1936, its validity must be sustained on the principle of the following cases, which may be briefly stated as follows:

> "Congress has the power to correct an inadvertent defect in an act of legislation discovered by the administration thereof, or by decisions of the courts, and by such correction destroy existing causes of action arising out of the defect in the act where such causes of action are not supported by any substantial equity."

Graham vs. Goodcell, 282 U.S. 409, 426; 75 L. ed. 415, 439; 51 S. Ct. Rep. 186.

McNair vs. Knott, 302 U.S. 369; 82 L. ed. 307; 58 S.Ct. Rep. 245.

Paramino Lumber Co. vs. Marshall, 309 U.S. 370, 377; 84 L. ed. 816; 60 S. Ct. Rep. 600.

Carpenter vs. Wabash R. Co., 390 U.S. 23, 27; 84 L. ed. 558; 60 S. Ct. Rep. 416.

Rafferty vs. Smith Bell & Co., 257 U.S. 226; 66 L. ed. 208, 210; 42 S. Ct. Rep. 71.

United States v. Heinszen & Co., 206 U.S. 370, 386; 51 L. ed. 1098.

Charlotte Harbor & N. R. Co. vs. Wells, 260 U.S. 8; 67 L. ed. 100; 43 S. Ct. Rep. 3.

Phipps v. School District of Pittsburgh, 111 Fed. (2d) 393, 396.

The principle above stated certainly applies in the present case. The petitioners have no substantial equity in their favor. The money raised by the preferred shares which they sought to tax was brought into those counties to save their citizens from the unfortunate experience of closed banks and to provide them with proper banking facilities. The bringing in of such funds took from them no right to tax anything which they could tax before and the opportunity to tax preferred stock held by Reconstruction Finance Corporation was given them merely by an oversight of Congress, upon which they seized. Congress by the Act of March 20, 1936, merely deprived them of the opportunity to realize upon their efforts to tax the preferred shares which opportunity Congress never intended to bestow and which was withdrawn before it could be realized upon by even the most grasping.

Petitioners seek to make something out of the fact that the rights claimed by them are public in their nature. That does not better their case. The rule permitting the cancellation of causes of action by the cor-

rection of defects in legislation by subsequent action of the legislature is more liberal where only public rights will be affected by the curative measure.

Hodges vs. Snyder, 261 U.S. 600; 67 L. ed. 819; 43 S. Ct. Rep. 435.

Western Union Telegraph Co. vs. Louisville & NR. Co., 258 U.S. 13; 66 L. ed. 437; 42 S. Ct. Rep. 258.

State of Pennsylvania vs. Wheeling & Belmont Bridge Co., 18 Howard, 355; 59 U.S. 460; 15 L. ed. 449

It is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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Appendix Follows

APPENDIX

Extract from the opinion of Judge Offutt in the case of State Tax Commission vs. Baltimore National Bank, 199 Atl. 127-128:

"As pointed out in State Tax Commission vs. Baltimore National Bank, 169 Md. 65, 77, 180 A. 260, the Finance Corporation may become, in a way, a partner in a business which it aids, and may share in the profits thereof. But those are mere incidents of its primary purpose and function which was to rehabilitate institutions which either had collapsed, or which without such aid would have collapsed, by granting credit and aid when all other sources of credit had dried up and there was no other aid.

"Mr. Jesse H. Jones, chairman of the corporation, in a statement in evidence under a stipulation, said that when the act was passed, out of a total of 24,600 banks in operation in 1930, 5,500 having deposits of three and a half billion dollars had been forced to suspend even before the bank holiday, and that after the holiday four billion dollars of additional deposits were tied up in nearly 4,200 unlicensed or restricted banks that had been open before the holiday but not thereafter. Depositors fearful for the safety of their funds steadily withdrew their deposits, the deposits of member banks of the Federal Reserve System declined by approximately seven billion dollars, many communities were without banking facilities, private lenders were unable or unwilling to supply additional capital to the banks, and the banks in turn were unable to supply the 'essential credit needs of business and industry which suffered accordingly.' Bank failures and suspensions were increasing, many states declared bank holidays, even the strongest banks were in danger, and the entire banking system of the nation was facing collapse.

"Whatever may be said of the danger that the swift currents of the ever widening whirlpool of federal activities will carry beyond the taxing power of the states so much property as to threaten the very existence of our dual form of government, it cannot be denied that the primary and essential duty of the national government in that crisis was to prevent, if possible, the complete collapse of the nation's credit, irreparable damage to its commerce and industry, and the chaos and disorder which were likely to follow. Nor can it be denied that the Reconstruction Finance Corporation as the agency employed to grant that aid was an essential instrumentality of the national government created and existing to perform a governmental function of the highest possible importance. Every reason advanced by the courts in support of the immunity of national banks, and the Federal Reserve Bank from state taxation, applies with at least equal force to the Finance Corporation. Neither performs a function more immediately essential to the continuance and integrity of the national government, while on the other hand both are operated for private profit, and the stock of both is owned in part by private investors. Nor is there rational support for the theory that the use of the nation's resources to avert a common national disaster is beyond the natural and legitimate scope of the powers granted to the national government 'in order ot form a more perfect Union, establish justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare.' "

PURPOSE OF ACT OF CONGRESS MARCH 20, 1936

The Bill which culminated in the Act of March 20, 1936 came before the Congress under unanimous favorable report from the appropriate Committee of each House. (Congressional Record, Vol. 80, pages 3965 and 4046.)

The measure was at all times treated as a remedial one for the avowed purpose of closing "an unintended legislative gap." This was taken for granted in the Senate and was soon made clear to the membership of the House by the leading members of the Committee on Currency and Banking. The statements to this effect in the record are so numerous that it would be exceedingly tiresome to catalogue them.

On March 19, 1936, the day on which the curative measure was enacted by Congress and the day before it was approved by the President, Mr. Hancock of North Carolina said, in explaining the object and purpose of the law, the following:

> "This bill is sound, meritorious, and in the public interest. Its passage will merely restore to the Reconstruction Finance Corporation, an instrumentality of the Federal Government, its constitutional immunity from taxation, which immunity Congress unquestonably intended it should have at the time of the passage of the act in 1932. Its necessity arises as a result of a recent decision of the Supreme Court in the case of Baltimore National Bank against Maryland State Tax Commission, in which the Court held that Article X of the act specifically exempting the Corporation, its franchise, capital, reserves, surplus and income from taxation, both State and Federal, was not effective in the face of section 5219 of the Revised Statutes passed in 1864 which expressly authorizes States to tax national bank shares, within certain limitations, regardless of ownership. The immunity from taxation upon the passage of the bill applies to the R. F. C. alone because it is a Federal Agency. *The bill, therefore, does no more than to close an unintended legislative gap.* It will not in any way affect the rights of any State taxing authority or municipal authority to levy taxes against the pre-

ferred stock, notes, or debentures held by any individual or other corporation." (Congressional Record, Vol. 80, page 4043) (Italics supplied.)

On February 24, 1936 Senator Barkley, in explaining the object and purposes of the bill to the Senate, used these words:

"It is simply the correction of either an oversight, or lack of foresight, or lack of sufficiently broad language to cover what was sought to be covered. The Supreme Court said it was not covered and we are simply trying to correct the mistake."

On the same day Senator Adams said:

"The theory of the bill is to carry out the intent of Congress when the original banking act was enacted, that the stock held by the Reconstruction Finance Corporation should not be taxed. In no place, so far as I know, has there been payment of the tax." (Congressional Record, Vol. 80, page 2646.)

On the same day Senator Barkley made this further statement:

"It was thought that the Reconstruction Finance Corporation Act, which attempted to exempt from taxation this stock and the securities held by it, was broad enough to cover all sorts of securities it might hold including preferred stock in these banks. The Government made that contention in the lawsuit originating in Maryland and decided by the Supreme Court. The Court held that the language of the act was not broad enough to include this particular kind of security and therefore it was taxable. The bill is for the purpose of putting such securities on the same basis with any other securities held by the Reconstruction Finance

Corporation and all other governmental agencies like the land banks, the certain limitations, regardless of ownership." *Vol. 80 page 4043.*

Senator Robinson said:

"It occurs to me that the primary question to be solved in relation to this proposed amendment is, what was the original intention of Congress when, in order to save banks threatened with ruin, it authorized the Reconstruction Finance Corporation to purchase preferred stocks?

Of course, the Supreme Court has held, in the case referred to by the Senator from Michigan, that the language used in the act did not actually and legally relieve such preferred stocks from liability to tax by the States. That decision, of course, is conclusive and binding; but still the question arises as to what was actually the intention of the Congress. Did the Congress, at the time it authorized the Reconstruction Finance Corporation to purchase preferred stocks in banks for the purpose with which we are all more or less familiar, actually intend that such stocks should be subject to taxation by the States? If it did, the question as to whether this proposed legislation should be passed is different from that which arises in my mind if it is made clear that the original intention was to exempt such stocks from taxation. (Page 2648)

To my mind the answer to the whole argument is comprehended in the question I originally propounded, what was the actual intention of the Congress, taking into consideration the record that has been made and referred to here by the various Senators, and the further fact, which, in my judgment, is of itself controlling, namely, that the Reconstruction Finance Corporation was not created by the United States for the pur-

pose of making profit. It was created as an agency to save private industry and private organizations, so that it cannot be regarded as a profit-making organization, although I hope it will, at least in the long run, earn enough to offset such losses as may be made on the loans which have been negotiated.

If the Government did not intend when it created this corporation that its preferred stock should be taxed, if it placed that construction on it—and most of the States did the same thing—in my judgment the enactment of the proposed legislation is not only warranted, it is essential." (Congressional Record, Vol. 80 pages 2647 and 2649.)

Senator Barkley here interposed:

> "The Court's decision was based upon an old statute regulating national banks, a statute passed before the Reconstruction Finance Corporation was created, which, of course, gave consent of the Federal Government to the taxation of shares of national banks in the State. The Senator knows how impossible it is for us, in the passage of a new act, to specifically repeal or withdraw every exemption or every provision of an old act which may have been enacted before. There is no doubt but that when Congress passed the general legislation referred to by the Senator from New York, it intended that all of these securities, whatever was held by the Reconstruction Finance Corporation, outside of real estate, should be exempt from local taxation. The mere fact that the Court held that it was not broad enough or specific enough to do that it seems to me should not militate against the enactment of the pending bill correcting that, and making it specific in the law." Congressional Record Vol. 80, page 2649.

In the House Mr. Ford of California hit the nail on the head when he likened the situation of the Government allowing its own property to be taxed when in the hands of a concern which it had created to save the Country to the homely absurdity of allowing a man to punish a helpful stranger for saving him from destruction. He said the condition of affairs which would be left if Congress failed to make the correction and close the hiatus might well be compared to *"an old chap who owned a small ranch through which a stream ran, and he had signs all over it, 'No trespassing'; and one day he himself fell in and a stranger went in and rescued him, and then he turned around and had the stranger arrested for trespassing on his property."* (Congressional Record, Vol. 80, page 3971.) (Italics supplied.")

Mr. Hollister without speaking a parable made the point equally vivid when he said:

> "Of course, if the bill is not passed, the States have the right under the decision of the Supreme Court in the Maryland case to tax preferred stock in national banks. The bill removes that right. But that is only a right which has existed since the Reconstruction Finance Corporation came into being. *There is no taking away any right which the State had before the Reconstruction Finance Corporation stepped into the picture."* (Congressional Record, Vol. 80, page 4057.) (Italics supplied.)

Mr. Wolcott on the day before had already said this:

> "When we passed the original Reconstruction Finance Corporation Act, we exempted from local taxation their franchise, their own stock, their income, and everything except their holdings. I believe it was the intention of the Congress at that time to include the holdings of the Reconstruction Finance Corporation and, as I view this bill, it is

merely an attempt on our part to clarify what was very apparently our intention when the original Reconstruction Finance Corporation Act was passed." (Congressional Record, Vol. 80, page 3966.)

To go on would extend these quotations from the Congressional Record until they become tiresome. Congress was eagerly determined to promptly correct its inadvertent omission and exempt the preferred shares in national banks which the earlier act had failed to accomplish.

No. 449

In the Supreme Court of the United States

OCTOBER TERM, 1942

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer, and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona.

Petitioners,

vs.

THE VALLEY NATIONAL BANK OF PHOENIX, a national banking association,

Respondent.

BRIEF ON BEHALF OF RESPONDENT

On Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

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No. 449

In the Supreme Court of the United States

OCTOBER TERM, 1942

MARICOPA COUNTY, ARIZONA; W. H. LINVILLE, as County Treasurer, and Ex-Officio Tax Collector of Maricopa County, Arizona; J. D. BRUSH as County Assessor of Maricopa County, Arizona; CHARLES H. FIELDS, JOHN A. FOOTE and GEORGE FRYE, as members of and constituting the Board of Supervisors and County Board of Equalization of Maricopa County, Arizona; PIMA COUNTY, ARIZONA; WALLACE S. BRANSFORD, as County Treasurer and Ex-Officio Tax Collector of Pima County, Arizona; THOMAS COLLINS, R. H. MARTIN, and J. B. MEAD, as members of and constituting the Board of Supervisors and County Board of Equalization of Pima County, Arizona,

Petitioners,

VS.

THE VALLEY NATIONAL BANK OF PHOENIX, a national banking association,

Respondent.

BRIEF ON BEHALF OF RESPONDENT

Outline of Brief

A. PETITIONERS ARE NOT WITHIN THE CONSTITUTIONAL PROTECTION WHICH THEY ASSERT

1. The rights of the two petitioners which are counties

(a) The counties are not necessary parties to these suits and have no independent rights therein

(b) Counties are mere instrumentalities of the state and can acquire no vested right to property independent of their creator, the state

2. The rights of the two petitioners who are county treasurers

(a) The county treasurers have no rights as individuals

(b) The county treasurers, when engaged in the collection of taxes are agents of the state of circumscribed and limited powers and without the approval of the duty constituted authorities of the state, cannot engage in a controversy with the national government by attacking the validity of an act of Congress for the purpose of subjecting an agency of the federal government to the payment of state taxes

3. The Boards of Supervisors who are petitioners are merely the governing board of the county and clearly have no rights independent of their counties

4. The states of the United States are not persons within the meaning of the due process clause of the Fifth Amendment to the Federal Constitution

(a) The only judicial opinions we have found are to the effect that the states do not come within the meaning of the due process clause of the Fifth Amendment

(b) It is established by numerous decisions in the state and Federal Courts that public corporations such as counties, municipalities and school districts are not protected by

the due process clause of the 14th Amendment to the Federal Constitution nor by the due process clauses in their respective state constitutions.

(c) While the word person may be construed so as to include the United States, the state or any corporation or entity, this is not its natural construction and it should not be so construed unless such construction is clearly within the purpose of the enactment

(d) States are sovereign and the principles that govern their rights and liabilities are not the same as the principles that govern the rights and liabilities of citizens

(e) The 5th Amendment came into the Constitution as a part of the bill of rights consisting of the first nine amendments to the Constitution, the several provisions of which were adopted from the then existing provisions of the constitutions of the states and were originally taken from the English Declarations of Rights and were directed toward protection of the rights of individuals and not toward the division of power between the state and national government

(f) The Constitution throughout clearly distinguishes between the states and the people and persons. There is no indication that the same distinction was not clearly preserved in the first ten amendments

(g) It is clear beyond question that the proponents of the Fifth Amendment did not have in mind its application to the states when it was adopted. It has not been so extended during the century and a half that has elapsed since its adoption. To now extend the same to a situation not contemplated upon its adoption is likely to result in undesirable consequences

5. The Tenth Amendment has no application to this case for the reason that the taxation of the shares of national banks is not reserved to the states

B. THE RETROACTIVE PROVISIONS OF THE ACT OF CONGRESS OF MARCH 20TH, 1936, DID NOT DEPRIVE PETITIONERS OF ANY VESTED RIGHTS

1. The consent of Congress to the taxation of the shares of stock of national banks was a gratuity which could be withdrawn at any time before the tax was actually collected

2. An act correcting an inadvertent defect in legislation and preventing a person from realizing a gain from such inadvertent defect does not deprive him of property without due process of law

3. The so-called retroactive provisions of the Act of Congress of March 20th, 1936, are in fact not retroactive. They merely apply to an existing situation and prevent collection of taxes levied before it was passed

4. The Act of March 20th, 1936, is in effect the withdrawal of a right to collect taxes from Reconstruction Finance Corporation, a wholly owned government instrumentality. Such right of withdrawal of collection is the equivalent of withdrawal of consent to sue the United States

5. The 1936 tax which is enjoined in case E-350 was not levied until after the Act of March 20th, 1936, became effective and so cannot possibly be held to have been a vested right when said act was passed

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ARGUMENT

(Figures in parentheses preceded by the letter R refer to page numbers of the printed record)

In granting the writ the court requested counsel to "discuss in their briefs and on the oral argument the question whether petitioners, who are counties, are within the constitutional protection which they assert." but did not indicate whether the briefs and argument should be limited to this point. We, therefore, present first our arguments and authorities in compliance with the Court's direction, and follow with other arguments and authorities, including those presented in our brief filed in opposition to the petition for the writ, hoping it will serve the convenience of the Court to have our whole case set forth in a single brief. The injunction granted by the District Court in each case runs only against the county treasurers (R. 266, 333) who are the necessary parties and such treasurers claim to act under authority from the state as well as their respective counties, hence the scope of this brief is extended to include discussion of the constitutional rights of all the petitioners, both in their indivdual and representatve capacities.

A. PETITIONERS ARE NOT WITHIN THE CONSTITUTIONAL PROTECTION WHICH THEY ASSERT

1. *The rights of the two petitioners which are counties.*

(a) *The counties are not necessary parties to these suits and have no independent rights therein.*

While under the Arizona system, generally speaking, the assessment, levy and collection of taxes for the state and all of its subdivisions is entrusted to the officers of the respective counties, subject to supervision in certain respects by the State Board of Equalization and State Tax Commission and such taxes when col-

lected are distributed to the state, county, school districts and other taxing districts (Articles 4 to 8, both inclusive, Chapter 73 Ariz. Ann. Code 1939), the county treasurers in collecting such taxes act as agents of the state and not the counties, and the statutory lien for such taxes is the lien of the state and not the lien of the counties.

Conway vs. Mosher,
55 Ariz. 307, 311; 101 Pac. (2) 209

Yuma County vs. Arizona,
56 Ariz. 310, 312; 107 Pac. (2) 374

These cases hold, notwithstanding the fact that until tax deed is issued the county treasurer has charge of the disposition of property sold under tax lien.

Sec. 73-817 Ariz. Ann. Code 1939 (see appendix page XVII).

and after tax deed is issued to the state, the board of supervisors of the county has control of the disposition of such property,

Sec. 73-838, Sec. 73-839, Ariz. Ann. Code 1939 (see appendix page XVII).

and the county receives its proper proportion of the money received upon sale of the property,

Sec. 73-839 Ariz. Ann. Code 1939 (see appendix page XVIII).

The county is so lacking in interest in the subject matter that it can assert no right under the tax lien to property sold to the state for taxes and its presence as a party to a suit attacking the validity of a tax sale is of no effect.

The interpretation of the state statutes by the Supreme Court of Ariozna is, of course, binding on this Court.

Chicago M. St. P. & P. R. Co. vs. Risty,
276 U.S. 567; 72 L.ed. 703; 48 S.Ct.Rep. 396

Sioux County vs. National Surety Co.,
276 U.S. 238; 72 L.ed. 547; 48 S.Ct.Rep. 239.

It is, therefore, clear that petitioners Maricopa and Pima Counties are not entitled to assert that the judgments appealed from in these cases violate any constitutional rights of the two petitioners, which are counties.

(b) *Counties are mere instrumentalities of the state and can acquire no vested right to property independent of their creator, the state.*

While under the Arizona constitution counties are bodies politic and corporate,

Sec. 1 Article XII Arizona Constitution (see appendix page IX).

and by statute may sue or be sued in their corporate names.

Secs. 17-201, 17-202 Ariz. Ann. Code 1939 (see appendix page XII).

Their powers are limited to the purposes of their creation as instrumentalities of the state,

Hartford Accident & Indemnity Co. vs. Wainscott, 41 Ariz. 439, 445; 19 Pac. (2) 328.

It is the general rule that such instrumentalities of the state do not have the power to assert independent constitutional rights.

State of Maryland vs. Baltimore & Ohio R.R. Co., 3 Howard 534, 550.

Rogers Locomotive Works vs. American Emigrant Co., 164 U. S. 559, 576; 41 L. ed. 552.

State vs. Baltimore & Ohio R.R. Co.,
12 Gill & J. 399; 38 Am. Dec. 319.

Albright vs. Board of Commissioners,
194 Pac. 913, 915 (Kan.).

Riley vs. Stack,
18 Pac. (2) 110, 111 (Cal.).

People vs. Crennan,
36 N. E. 187, 189 (N. Y.).

Herrick vs. Cherokee Co.,
202 N. W. 252 (Ia.).

Hewitt & Sons vs. Keller,
275 N. W. 94, 95 (Ia.).

State vs. Board of Commissioners,
189 N. W. 639, 641 (Neb.).

The rule of the foregoing cases is applied in Arizona.

Duke vs. Yavapai County,
24 Ariz. 567, 573; 211 Pac. 862.

The principle that the due process clause of the 14th Amendment and the due process clauses of state constitutions do not protect municipal corporations and other instrumentalities of the state, is established by numerous decisions.

Williams vs. Baltimore,
289 U. S. 36; 77 L. ed. 1015; 53 S. Ct. Rep. 431 (City).

Newark vs. New Jersey,
262 U. S. 192; 67 L. ed. 943; 43 S. Ct. Rep. 539 (City).

Palmcroft Development Co. vs. Phoenix,
46 Ariz. 200, 212; 49 Pac. (2) 626 (City).

Shelby vs. Pensacola,
151 So. 53 (Fla.) (City).

Waddell vs. Board of Directors,
175 N. W. 65 (Ia.) (School Dist.).

Lincoln School Dist. vs. Redfield School Dist., 283 N. W. 881 (Ia.).

Independent School Dist. vs. State Appeal Board, 299 N. W. 440 (Ia.).

A few cases hold that the due process clause of the state constitution applies to municipalities as to their proprietary functions but none so far as we are aware hold that it applies to municipal corporations as to their governmental functions.

State vs. Arnold, 42 Pac. (2) 976 (Mont.).

In Re Jensen, 59 N. Y. Supp. 653.

In view of the fact that Arizona counties have no power to exercise nongovernmental functions,

Hartford Accident and Indemnity Co. vs. Wainscott, 41 Ariz. 439; 19 Pac. (2) 328,

the principle of the Arnold and Jensen cases, supra, is not material tot his case. The Arizona statutes remain the same as they were when the Hartford Accident and Indemnity case, supra, was decided Secs. 17-203, 17-206 Ariz. Ann. Code 1939, (see appendix, page XII-XIV).

We think it is clear under the above authorities that the two counties which are petitioners herein are not such entities as have the legal right to claim the protection of the due process clause of the 5th Amendment.

2. *The rights of the two petitioners who are county treasurers.*

(a) *The county treasurers have no rights as individuals.*

The county treasurers as individuals clearly have no claim that they are being deprived of property.

The taxes the collection of which is enjoined by the judgments in these suits could in no way inure to their benefit and as they are in no way prejudiced by the judgments attacked by this appeal they have no right to assert the invalidity of the act of Congress on which the judgment is based. They are not defending for themselves but for their principals.

State vs. Baltimore & Ohio R. Co.,
3 Howard 534.

And as mere taxpayers and citizens of the county and state they have no power to set up any constitutional rights of the counties or the state.

Scott vs. Frazier,
258 Fed. 669, 670.

Massachusetts vs. Mellon,
262 U. S. 447; 67 L. ed. 1078;
43 S. Ct. Rep. 597.

That a taxpayer as such could not set up a constitutional right of the state appears to have been assumed as not subject to question by the Supreme Court in the Scott case on appeal.

Scott vs. Frazier,
253 U. S. 243; 64 L. ed. 883.

(b) *The County Treasurers when engaged in the collection of taxes are agents of the state of circumscribed and limited powers and without the approval of the duly constituted authorities of the state, cannot engage in a controversy with the national government by attacking the validity of an act of Congress for the purpose of subjecting an agency of the federal government to the payment of state taxes.*

It is settled by the Supreme Court of Arizona that the county treasurers though elected in the respective counties, Secs. 17-502, 17-505 Ariz. Ann. Code 1939

(see appendix, page XIV) and paid by the counties, Sec. 12-704, 12-709 Ariz. Ann. Code 1939 (see appendix, page X-XI), are agents of the state for the collection of taxes.

Conway vs. Mosher,
55 Ariz. 307, 311; 101 Pac. (2) 209.

Yuma County vs. Arizona,
56 Ariz. 310, 312; 107 Pac. (2) 374.

It is also established by the same authority that the board of supervisors of the county has control over the interest of the county in tax suits.

Pima County vs. Grosetta,
54 Ariz. 530, 539; 97 Pac. (2) 538.

But the Attorney General who is a constitutional officer, Sec. 1, Art. 5, Arizona Constitution (see appendix, page VIII) is by statute required to prosecute and defend in any court any cause wherein the state is a party or is interested.

Subdiv. 2, Sec. 4-502, Arizona Code 1939 (see appendix, page IX).

and appear for the state in any action in the courts of the United States.

Subdiv. 8, Sec. 4-502, Ariz. Code Ann. 1939 see appendix, page X).

With the exception of the Industrial Commission no official board, commission or other agency of the state, other than the Attorney General shall employ any attorney.

Sec. 4-503, Ariz. Ann. Code 1939 (see appendix, page X).

Under the above provision the Attorney General only has the right to represent the state or to employ assistants to represent the state.

Crane vs. Frohmiller,
45 Ariz. 490, 502; 45 Pac. (2) 955.

This does not prevent an officer of the state who is expressly given the power to direct the prosecution of certain kinds of actions from prosecuting an action of that kind by another attorney.

State vs. Hendrix,
124 Pac. (2) 768, 771 (Ariz.).

But county treasurers are not directed or authorized to prosecute or defend any suits whatever. Their duties are particularly prescribed by the statutes and their duties in the collection of taxes are limited to the customary procedure of collection, and sale of the property in case of delinquency in payment. County attorneys are given no authority to prosecute or defend any suits to which the county treasurers are parties as agents of the state,

Sec. 17-902 Ariz. Ann. Code 1939 (see appendix, page XV).

and the authority of boards of supervisors is limited to directing and controlling the prosecution and defense of actions to which the county is a party and undoubtedly does not extend to the interest of the state in such actions.

Pima County vs. Grosetta,
54 Ariz. 530, 539; 97 Pac. (2) 538.

So it seems clear there is no one before the court in this case who is authorized to assert that the State of Arizona is being deprived of its property in violation of the national Constitution.

It will probably be suggested that the county treasurer as a party-defendant is entitled to assert any defense the state may have. This, we believe, to be

unsound. The county treasurer is a county officer and a mere agent of the state whose state functions are limited to the collection of taxes. To allow him to assert that the state is being deprived of its property without due process by an act of Congress would be as ridiculous as it would be in a case such as North Dakota vs. Minnesota, 263 U. S. 365; 68 L. ed. 342; 44 S. Ct. Rep. 138, to allow a path master or road overseer to bring a suit on behalf of his state against a neighboring state because its acts flooded the roads in his charge.

3. *The Boards of Supervisors who are petitioners are merely the governing board of the county and clearly have no rights independent of their counties.*

Secs. 17-201, 17-702 Ariz. Ann. Code 1939.

Their right to defend suits and employ counsel for that purpose has been discussed above.

4. *The states of the United States are not persons within the meaning of the due process clause of the Fifth Amendment to the Federal Constitution.*

(a) *The only judicial opinions we have found are to the effect that the states do not come within the meaning of the due process clause of the Fifth Amendment.*

Scott vs. Frazier,
258 Fed. 669, 670.

Concurring opinion of Judge Offut in State Tax Commission vs. Baltimore National Bank, 199 Atl. 119, 125 (Md.).

(b) It is established by numerous decisions in the *State and Federal Courts that public corporations such as counties, municipalities and school districts*

are not protected by the due process clause of the 14th amendment to the Federal Constitution nor by the due process clauses in the respective state constitutions.

See cases cited under 1 (b) supra, pages 7-9 of this brief.

The interpretation placed upon the word person in the 5th Amendment and the 14th Amendment should be the same.

Heiner vs. Donnan,
285 U. S. 312; 76 L. ed. 772; 52 S. Ct. Rep. 358.

We recognize the fact that the cases which hold that the 14th Amendment has no application to counties, municipalities, school districts and other subdivisions of the state are based partly upon the ground that such subdivisions are creations of the state and subject to the state's control, while the states possess a sovereignty separate from the sovereignty of the United States so that there is a difference between the application of the due process clause of the state constitutions to the subdivisions of the state and the application of the Fifth Amendment to the state.

Burnet vs. Brooks,
288 U. S. 378; 77 L. ed. 844; 53 S. Ct. Rep. 457.

There is, however, a strong similarity in the two situations in that the language to be construed is the same and in each case the question is whether the word persons is to be construed so as to include a public corporation.

(c) *While the word person may be construed so as to include the United States, the state or any corporation or entity, this is not its natural construction and it should not be so construed unless such construction is clearly within the purpose of the enactment.*

United States vs. Cooper Corporation,
312 U. S. 600; 85 L. ed. 1071; 61 S. Ct. Rep. 742.

Georgia vs. Evans,
86 L. ed. 929 (adv.); 62 S. Ct. Rep. 972 (adv.).

Baker vs. Kirschnek,
176 Atl. 489, 491 (Pa.).

(d) *States are sovereign and the principles that govern their right and liabilities are not the same as the principles that govern the rights and liabilities of citizens.*

In its early history this Court, yielding to arguments that under our government sovereign and citizen were on an equality, held states were subject to suit in this Court by private citizens.

Chisholm vs. Georgia.
2 Dallas 419.

The error was corrected by the 11th Amendment which prevents states from being placed in the same category as private individuals or private corporations.

(e) *The 5th Amendment came into the Constitution as a part of the bill of rights consisting of the first nine amendments to the Constitution, the several porvisions of which were adopted from the then existing provisions of the constitutions of the states and were originally taken from the English Declarations of Rights and were directed toward protection of the rights of individuals and not toward the division of power between the state and national government.*

It is a matter of history that the Bill of Rights, consisting of the first nine amendments to the Constitution, was not created by the Congress that proposed its adoption. In substance, at least, these several pro-

visions for protection against public authority already existed in most of the constitutions of the thirteen original states. When the adoption of a bill of rights was proposed in the Constitutional Convention it was suggested that its preparation would be a simple matter as the material therefor was available in the existing state constitutions.

Madison's Journal, as edited by E. H. Scott, page 717.

The Constitutional Convention did not authorize its preparation, but many of the states, upon their ratification of the Constitution, protested against the absence of a bill of rights and the demand therefor was so insistent that it was proposed by the first Congress and promptly ratified by the states. The several amendments were probably prepared by Madison.

Hughes—The Supreme Court of the U. S., 160, 187.

but the substance theerof came from the English Petition of Rights.

The due process clause of the Fifth Amendment apparently was first used in the statute of 28 Edward III and probably first appeared in the U. S. in an act of 1692 of the General Court of Massachusetts Bay. But, for the most part, before the adoption of the Fifth Amendment the Declarations of Rights during the Revolutionary period beginning with that of Virginia, had used the phrase of Magna Charta, "the law of the land." With few exceptions the phrase, "due process of law," is now found in all state constitutions.

Hughes—The Supreme Court of the U. S., 185.

The significance of this history is that the protection against deprivation of property without due process of law had its origin in the fear of the individual

against oppression by the government, a protection which was already provided against the state by the state constitutions and was desired also against the new Federal Government. Outside of the 10th Amendment there is no indication of any intent to protect the state governments against the newly created national government, and in the 10th Amendment where encroachment against state governments is provided for, the states are clearly and specifically mentioned.

(f) *The Constitution throughout clearly distinguishes between the states and the people and persons. There is no indication that the same distinction was not clearly preserved in the first ten amendments.*

There is no confusion in the use of the words state, people and person in the Constitution or the first ten amendments. The words are used in their natural meaning throughout. The word state is found in

Sections 2, 3, 4, 8, 9, 10, Article I,
Sections 1 and 2, Article II,
Section 2, Article III,
Sections 1, 2, 3, 4, Article IV,
Article V,
Article VI,
Article VII,

and is found in the first ten amendments only once, that being in the Tenth Amendment.

The word people is found only in the Preamble, but is found in the first ten amendments five times.

The word person is found in

Sections 2, 3, 6, 7, 9, Article I,
Section 1, Article II,
Section 3, Article III,
Section 2, Article IV,

and is found only twice in the first ten amendments, both instances being in the Fifth Amendment.

It would be strange, indeed, if the same statesmen who framed the Constitution and who throughout that instrument and the first ten amendments said "state," whereby they meant "state," and "people" where they meant "people," and "person" where they meant "person," would carelessly use the word person as inclusive of the states. The frequent use of the word people in the first ten amendments shows it was the protection of individuals and not states to which their minds were directed in the Bill of Rights.

(g) *It is clear beyond question that the proponents of the Fifth Amendment did not have in mind its application to the states when it was adopted. It has not been so extended during the century and a half that has elapsed since its adoption. To now extend the same to a situation not contemplated upon its adoption is likely to result in undesirable consequences.*

To extend the language of an enactment beyond its original contemplation is always hazardous. Perhaps no action of the Supreme Court has met with more criticism than the extension of the due process clause to private corporations. To again extend the same to the new field of state and federal relationships might very well result in serious complications.

Technical rules adopted to protect the individual against spoilation assume a new importance and are often deemed oppressive in themselves when extended to great corporations by judicial construction. Such technical rules have no place in determining rights between sovereignties. It has long been recognized that in determining rights between states, the Supreme Court applies Federal Law, State Law and International Law as the exigencies of the particular case may require.

Kansas vs. Colorado,
185 U. S. 125-146; 46 L. ed. 838; 22 Sup Ct. Rep. 552.

In such cases between the states it would be wholly inappropriate to apply the same system of municipal law that applies between individuals in all its details. This court long ago pointed this out in the following words:

"But the words of the Constitution would be a narrow ground upon which to construct and apply to the relations between states the same system of municipal law in all its details which would be applied between individuals. If we suppose a case which did not fall within the power of Congress to regulate, the result of a declaration of rights by this court would be the establishment of a rule which would be irrevocable by any power except that of this court to reverse its own decision, an amendment of the Constitution, or possibly an agreement between the states sanctioned by the legislature of the United States.

"The difficulties in the way of establishing such a system of law might not be insuperable, but they would be great and new. * * * But it does not follow that every matter which would warrant a resort to equity by one citizen against another in the same jurisdiction equally would warrant an interference by this court with the action of a state. It hardly can be that we should be justified in declaring statutes ordaining such action void in every instance where the Circuit Court might intervene in a private suit, upon no other ground than analogy to some selected system of municipal law, and the fact that we have jurisdiction over controversies between states."

Missouri vs. Illinois,
200 U. S. 496, 520-521; 50 L. ed. 572; 26 S. Ct. Rep. 268.

As new fields of controversy were being opened between the states it was said a system of what may be called interstate law, relating to the rights and obligations of the states inter sese, was being developed.

> Hughes—The Supreme Court of the U. S., pages 140, 141,

and this Court, in considering such cases, has frequently reasserted the principle of the declaration of Justice Holmes in the case of Missouri vs. Illinois, quoted above.

See:

> Connecticut vs. Massachusetts,
> 282 U. S. 660; 75 L. ed. 602; 51 S. Ct. Rep 286.
>
> Kansas vs. Colorado,
> 206 U. S. 46, 97; 51 L. ed. 956; 27 St. Ct. Rep. 655.
>
> North Dakota vs. Minnesota,
> 263 U. S. 365; 68 L. ed. 342; 44 S. Ct. Rep. 138.

Section 2 of Article III of the Constitution gives this Court jurisdiction of cases between states and the United States as well as cases between states. This jurisdiction between nation and state has been less exercised than that between the states. Recent legislation of Congress, bringing nation and state into legislative and financial co-operation, is destined to bring such litigation into prominence. Thus the Reclamation Act brought the intervention of the United States in Kansas vs. Colorado, 206 U. S. 46, 97; 51 L. ed. 956; 27 S. Ct. Rep. 655.

The Maternity Act gave rise to Massachusetts vs. Mellon, 262 U. S. 447; 67 L. ed. 1078; 43 S. Ct. Rep. 597.

The act permitting states to tax shares of national banks gave rise to Baltimore National Bank vs. State

Tax Commission, 297 U. S. 209; 80 L. ed. 586; 56 S. Ct. Rep. 417.

The Home Owners' Loan Act gave rise to Hopkins Federal Savings and Loan Association vs. Cleary, 296 U. S. 316; 80 L. ed. 251; 56 S. Ct. Rep. 417; and the Federal Water Power Act gave rise to the case of United States vs. Appalachian Electric Power Co., 311 U. S. 377; 85 L. ed. 243; 61 S. Ct. Rep. 291.

Other cases in which no issue was framed between state and nation indicate further possibilities of this character of controversies.

Steward Machine Co. vs. Davis,
301 U. S. 548-618; 81 L. ed. 1279; 57 S. Ct. Rep. 883 (Federal Social Security Act).

United States vs. Bekins,
304 U. S. 27; 82 L. ed. 1137; 58 S. Ct. Rep. 811 (Municipal Bankruptcy Act).

James Stewart & Co. vs. Sadrakula,
309 U. S. 94; 84 L. ed. 596; 60 S. Ct. Rep 431 (State Labor Law on Federal Site).

Frahn vs. Tennessee Valley Authority,
41 Fed Supp. 83 (Tennessee Valley Authority Act),

Morris vs. Duby,
274 U. S. 135; 71 L. ed. 967; 47 S. Ct. Rep. 548 (Federal Highway Act).

In all cases of this kind there is present the "larger issue between federal and state authorities functioning as a harmonious whole."

Chicago vs. Fieldcrest Dairies,
86 L. ed. 888, 891 (Adv.).

The injection into that class of cases at this late day of the provisions of a Bill of Rights adopted to protect

private individuals against the possibility of a despotic government, seems clearly inadvisable.

The argument may be advanced that this case does not present a controversy between the taxing power of the state and federal government, but merely a private controversy between the two counties and the bank. Such is not the case. The taxes are levied upon the shares of stock owned by Reconstruction Finance Corporation. The bank is merely paying agent.

Sec. 73-205 Ariz. Ann. Code 1939 (see appendix, page XVI).

Federal Land Bank vs. Yuma County,
42 Ariz. 45; 22 Pac. (2) 405.

Gibbons vs. White,
47 Ariz. 180; 54 Pac. (2) 555.

It is true that this case involves only a money issue and so appears to be readily capable of being disposed of by application of the principle of vested rights, but such is not the case. The government is bound to consider the rights and equities of the other 47 states and the thousands of other counties and ought not to be compelled under the pretext of due process to recognize the claim of petitioners because the statutory lien attached January 1st to the prejudice of others whose lien attached April 1st.

5. *The Tenth Amendment has no application to this case for the reason that the taxation of the shares of national banks is not reserved to the states.*

The foregoing argument and the authorities in support thereof apply as well to the individual claims of the several petitioners under the Tenth Amendment as under the Fifth Amendment. If, however, it should be deemed by this court that any of said petitioners sufficiently represent the state to assert the state's

rights under the Federal Constitution, it is necessary to consider the claim of the state under the Tenth Amendment separately from what we have above said as to its claim under the Fifth Amendment, for the reason that the Tenth Amendment expressly mentions the states and undoubtedly the State of Arizona has the right to make claim to any protection that amendment offers. The Tenth Amendment does not create any rights in the states. It is merely a declaration that the powers which the states have not delegated to the Federal Government by the Constitution are retained by them. It follows that the claim by the petitioners on behalf of the state under the Tenth Amendment merely presents the proposition that the Act of Congress of March 20, 1936, in some respects goes beyond the power delegated to the Federal Government by the Constitution. In order to determine whether this is true it is necessary to examine the authorities upon the question of the taxation of shares of stock of national banks.

Prior to the adoption of the present National Bank Act, two cases determined that the old Bank of the United States was a federal instrumentality and that its operations were beyond the power of state taxation by virtue of implied prohibition of the federal constitution without the aid of federal legislation.

McCulloch vs. Maryland,
4 Wheaton 316; 4 L. ed. 579 (1819).

Osborn vs. Bank,
9 Wheaton 738; 6 L. ed. 204 (1824).

The present National Bank Act (12 USCA 21-200), was adopted February 25, 1863. As adopted at that date it contained no provision for taxation. It was amended by the Act of June 3, 1864, and as so amended

it contained a provision which was the basis for the present law to the effect that the banks should not be taxed except upon their real estate and their shares of stock might be taxed to their shareholders at a rate not in excess of the taxation of other moneyed capital. Undoubtedly this provision was based upon the statement of Chief Justice Marshall in the McCulloch case. Within two years after its adoption it came before the consideration of the Supreme Court of the United States in Van Allen vs. Assessors, 3 Wallace, 573; 18 L. ed. 229 (1866). This was followed closely by the case of Bradley vs. Illinois, 4 Wallace 459; 18 L. ed. 433 (1867), and it has subsequently been before the Supreme Court for consideration upon numerous occasions.

People vs. Weaver,
100 U. S. 539, 543; 25 L. ed. 705 (1880).

First National Bank of Gulf Port vs. Adams,
258 U. S. 362; 42 Sup. Ct. Rep. 323; 66 L. ed. 661 (1922).

National Bank of Redemption vs. Boston,
125 U. S. 60; 8 S. Ct. Rep. 772; 31 L. ed. 689 (1888).

Owensboro National Bank vs. Owensboro,
173 U. S. 664; 10 S. Ct. Rep. 537; 43 L. ed. 850 (1899).

Bank of California vs. Richardson,
248 U. S. 476; 39 S. Ct. Rep. 165; 63 L. ed. 372 (1919).

Des Moines National Bank vs. Fairweather,
263 U. S. 103; 44 S. Ct. Rep. 23; 68 L. ed. 191 (1923).

First National Bank vs. Anderson,
269 U. S. 341; 46 S. Ct. Rep. 135; 70 L. ed. 295 (1925).

First National Bank vs. Hartford,
273 U. S. 548; 47 S. Ct. Rep. 462; 71 L. ed. 767 (1927).

Baltimore Nat. Bank vs. State Tax Commission,
297 U. S. 209; 56 S. Ct. Rep. 417; 80 L. ed. 586 (1936).

There are many more cases. The above are given here to show that beginning with the case of Van Allen vs. Assessors, supra, the cases all lay down the rule that the provision of the federal statute is the exclusive grant of power to the states to tax national banks either on their stock or as otherwise permitted by the statute, and that beginning with the case of People vs. Weaver, supra, the cases have all laid down the rule more or less positively that there is no power in the states to tax the stock of national banks without the consent of Congress as expressed in the federal statute. In the more recent cases the Supreme Court of the United States has shown a tendency to limit the exemption of federal instrumentalities from taxation by implication from the constitution itself and to emphasize the power of Congress to exempt federal instrumentalities by legislation.

State of Alabama vs. King & Boozer,
62 S. Ct. Rep. 43 (Adv.); 86 L. ed. 1 (Adv.).

Pittman vs. Home Owners' Loan Corp.,
308 U. S. 21; 60 S. Ct. Rep. 15; 84 L. ed. 11.

Federal Land Bank vs. Priddy,
295 U. S. 229; 55 S. Ct. Rep. 705; 79 L. ed. 1408.

Smith vs. Kansas City Title & Trust Co.,
255 U. S. 180; 65 L. ed. 577; 41 S. Ct. Rep. 243.

Federal Land Bank vs. Bismarck Loan Co.,
62 Sup Ct. Rep. 1 (Adv.); 86 L. ed. 46 (Adv.).

But the doctrine of exemption from taxation by implication from the constitution itself, while limited by the more recent decisions, still remains. The decision in the case of Baltimore Nat. Bank vs. State Tax Commission, supra, which is the last case upon the question of exemption from taxation of shares of national banks, was placed squarely upon the proposition that the implied constitutional exemption had been waived by an Act of Congress.

For the purposes of this case it is wholly immaterial whether the exemption is rested upon implication from the constitution or upon prohibition by an act of Congress. The Act of March 20, 1936, is a prohibition as well as a withdrawal of consent. The significance of the long line of cases above cited lies in the fact that they establish beyond question that the power to grant or withhold taxation of national bank shares is not a power reserved to the states, but is a power granted to Congress as an incident to the power of creating such banks, which is implied from the major powers expressly granted by the Federal Constitution, as was so ably pointed out by Chief Justice Marshall in McCulloch vs. Maryland, supra. Appellants, being forced to admit that Congress may grant or withhold taxation of national bank shares, take the position that Congress may provide that the states shall not levy a tax on national bank shares, but that it cannot prevent the collection of a tax already levied upon such shares. This position cannot be maintained. Where a power exists in Congress the means by which, the manner in which, and the extent to which it may be exercised, rests in the discretion of Congress.

McCulloch vs. Maryland,
4 Wheaton 316, 423; 4 L. ed. 579.

Courts can not impose any limitations in these respects. Such limitations do not exist unless they are imposed by the Constitution. No constitutional limitations of this power are pointed out except the asserted limitation of the due process clause of the Fifth Amendment, which we have shown does not apply.

The power of exempting federal agencies from taxation stems from the necessity of preserving them. This necessity may require the prevention of the collection of a tax already levied.

It is clear from the foregoing authorities that from McCulloch vs. Maryland (1819) to Federal Land Bank vs. Bismarck Loan Co. (1941) the cases uniformly hold that granting or withholding taxation of national bank shares is not a power reserved to the states but is a power granted to Congress by the Federal Government. The manner in which, the means by which and the extent to which said power shall be exercised rests in the discretion of Congress.

B. THE RETROACTIVE PROVISIONS OF THE ACT OF CONGRESS OF MARCH 20TH, 1936, DID NOT DEPRIVE PETITIONERS OF ANY VESTED RIGHTS.

1. *The consent of Congress to the taxation of the shares of stock of national banks was a gratuity which could be withdrawn at any time before the tax was actually collected.*

The Circuit Court of Appeal did not find it necessary to consider the application of the Fifth Amendment to states and subdivisions of states but disposed of the case upon the ground that it was settled by the decisions of this Court that since shares of stock in national banks were subject to state taxation only by the consent of Congress taxation of such shares with

the consent of Congress was a privilege or gratuity that might be withdrawn at any time before collection of the tax and that when so withdrawn the right to such collection ceased. The Court followed in this respect the opinion of the District Court of Georgia in the case of Reconstruction Finance Corporation vs. Elder, 26 F. Supp. 772, which decision is amply supported by the decisions of this Court.

Shares of stocks of national banks can be taxed by the states only with the consent of Congress.

Van Allen vs. Assessors,
3 Wallace 573; 18 L. ed. 229.

Bradley vs. Illinois,
4 Wallace 459; 18 L. ed. 433.

People vs. Weaver,
100 U. S. 539, 543; 25 L. ed. 705.

Owensboro National Bank vs. Owensboro,
173 U. S. 664; 19 S. Ct. Rep. 537; 43 L. ed. 850.

Bank of California vs. Richardson,
248 U. S. 476, 482-484; 39 S. Ct. Rep. 165; 63 L. ed. 372.

First National Bank vs. Adams,
258 U. S. 362, 364; 42 S. Ct. Rep. 323; 66 L. ed. 661.

Des Moines National Bank vs. Fairweather
263 U.S. 103, 106, 44 Sup. Ct. Rep. 23, 68 L.ed 191.

First National Bank vs. Anderson,
269 U. S. 341, 347; 46 S. Ct. Rep. 135; 70 L. ed. 295.

First National Bank vs. Hartford,
273 U. S. 548; 47 S. Ct. Rep. 462; 71 L. ed. 767.

Baltimore National Bank vs. State Tax Commission,
297 U. S. 209; 56 S. Ct. Rep. 417; 80 L. ed. 586.

A privilege or gratuity granted or conferred by the United States may be withdrawn at any time by act of Congress.

Lynch vs. U. S.,
292 U. S. 571; 78 L. ed. 1434, 1439; 54 S. Ct. Rep. 840.

DeGroot vs. U. S.,
5 Wallace 419; 18 L. ed. 700.

U. S. vs. Teller,
107 U. S. 64, 68; 27 L. ed. 352.

Frisbie vs. U. S.,
157 U. S. 160, 162; 39 L. ed. 657.

U. S. vs. Cook,
257 U. S. 523; 66 L. ed. 350, 351; 42 S. Ct. Rep. 200.

Van Horn vs. Hines,
122 F. (2) 207; certiorari denied, 62 S. Ct. Rep 350 (Adv.); 86 L. ed. 257 (Adv.).

Salt Co. vs. E. Saginaw,
13 Wallace 373; 20 L. ed. 611.

Dodge vs. Board of Education,
302 U. S. 74; 82 L. ed. 57; 58 S. Ct. Rep. 98.

Petitioners seek to avoid the force of the above authorities by contending that the cases permitting withdrawal of privileges or gratuities do not apply because withdrawal of the consent to tax after the lien of the tax has attached may interfere with the orderly collection of the state's revenue. That is an argument more properly addressed to Congress than to the courts. As pointed out by the above cases the power to tax the property of the United States is withdrawn from the states by the Federal Constitution.

In creating Reconstruction Finance Corporation, Congress did not set up an organization out of which

the United States was to make a profit. The purpose of that act was to assist the several states and the citizens thereof to survive the depression. The purpose of the particular Act authorizing Reconstruction Finance Corporation to purchase preferred stock of national banks is well stated in the extract from Judge Offutt's opinion in the case of Tax Commission vs. Baltimore National Bank, supra, quoted in the appendix to this brief.

The consent of Congress to state taxation of preferred bank stock held by Reconstruction Finance Corporation found to have been granted by the decision of this court in Baltimore National Bank vs. State Tax Commission, 297 U. S. 209; 56 S. Ct. Rep. 417; 80 L. ed. 586, in fact operated as the grant of a double gratuity. The federal government first supplied the use of the funds with which to purchase the shares, and, second, permitted the states to tax the shares purchased with the funds advanced for that particular purpose. Thus the United States first put the money into the local communities for the purpose of saving those communities from all the evils of closed banks, and, second, consented that the local authorities tax this money which had been put into the communities for their benefit. The granting of this second gratuity through consent to state and local taxation was due wholly to the failure of Congress to have in mind or correctly apprehend the effect of its former legislation permitting the taxation of shares of stock of national banks.

2. *An act correcting an inadvertent defect in legislation and preventing a person from realizing a gain from such inadvertent defect does not deprive him of property without due process of law.*

The Circuit Court of Appeals might well have mentioned the oversight of Congress as additional ground for upholding the validity of the Act of March 20, 1936, as was done by the District Court of the Northern Division of Georgia in the case of Reconstruction Finance Corporation vs. Elder, 26 Fed. Supp. 772, in which that court stated:

> "In my opinion, it is clear that the privilege to tax such stock standing in the name of Reconstruction Finance Corporation, a purely governmental agency, resulted from mere oversight on the part of Congress and that it was never the intention of Congress to permit the taxation of such shares when so owned; that this oversight was corrected as soon as possible after the Supreme Court decision, supra, by the passage of the Act of March 20, 1936, which expressly, and without ambiguity, undertakes to annul such privilege with respect to present, future and past assessments."

That the purpose of the Act of March 20, 1936, was to correct an inadvertent omission of Congress is made clear from the statement of the history of the Act inserted in the appendix to this brief.

In view of the history of said Act of March 20, 1936, its validity must be sustained on the principle of the following cases, which may be briefly stated as follows:

> "Congress has the power to correct an inadvertent defect in an act of legislation discovered by the administration thereof, or by decisions of the courts, and by such correction destroy existing causes of action arising out of the defect in the act where such causes of action are not supported by any substantial equity."

Graham vs. Goodcell,
282 U. S. 409, 426; 75 L. ed. 415, 439; 51 S. Ct. Rep. 186.

McNair vs. Knott,
302 U. S. 369; 82 L. ed. 307; 58 S. Ct. Rep. 245.

Paramino Lumber Co. vs. Marshall,
309 U. S. 370, 377; 84 L. ed. 814; 60 S. Ct. Rep. 600.

Carpenter vs. Wabash R. Co.,
309 U. S. 23, 27; 84 L. ed. 558; 60 S. Ct. Rep. 416.

Rafferty vs. Smith Bell & Co.,
257 U. S. 226; 66 L. ed. 208, 210; 42 S. Ct. Rep. 71.

United States vs. Heinszen & Co.,
206 U. S. 370, 386; 51 L. ed. 1098.

Charlotte Harbor & N. R. Co. vs. Wells,
260 U. S. 8; 67 L. ed. 100; 43 S. Ct. Rep. 3.

Phipps vs. School District of Pittsburgh,
111 Fed. (2) 393, 396.

The principle above stated certainly applies in the present case. The petitioners have no substantial equity in their favor. The money raised by the preferred shares which they sought to tax was brought into those counties to save their citizens from the unfortunate experience of closed banks and to provide them with proper banking facilities. The bringing in of such funds took from them no right to tax anything which they could tax before and the opportunity to tax preferred stock held by Reconstruction Finance Corporation was given them merely by an oversight of Congress, upon which they seized. Congress by the Act of March 20, 1936, merely deprived them of the opportunity to realize upon their efforts to tax the

preferred shares, which opportunity Congress never intended to bestow and which was withdrawn before it could be realized upon by even the most grasping.

Petitioners seek to make something out of the fact that the rights claimed by them are public in their nature. That does not better their case. The rule permitting the cancellation of causes of action by the correction of defects in legislation by subsequent action of the legislature is more liberal where only public rights will be affected by the curative measure.

Hodges vs. Snyder,
261 U. S. 600; 67 L. ed. 819; 43 S. Ct. Rep. 435.

Western Union Telegraph Co. vs. Louisville & N. R. Co.,
258 U. S. 13; 66 L. ed. 437; 42 S. Ct. Rep. 258.

State of Pennsylvania vs. Wheeling & Belmont Bridge Co.,
18 Howard 421; 15 L. ed. 449.

3. *The so-called retroactive provisions of the Act of Congress of March 20, 1936, are in fact not retroactive. They merely apply to an existing situation and prevent collection of taxes levied before it was passed.*

While we have discussed the Act of March 20, 1936, as though it were a retroactive act, particularly as applied to Case E-333 involving the 1935 taxes, as a matter of fact the act is not retroactive at all. It merely applies to a situation existing at its passage. "A statute is not retroactive merely because the facts or requisites upon which its subsequent action depends, or some of them are drawn from a time antecedent to the enactment."

Reynolds vs. United States,
292 U. S. 443, 449; 78 L. ed. 1353; 54 S. Ct. Rep. 800.

Cox vs. Hart,
260 U. S. 427, 435; 67 L. ed. 332; 43 S. Ct. Rep. 154.

United States vs. Trans-Missouri Association,
166 U. S. 290, 342; 41 L. ed. 1007, 1028.

Congress frequently passes taxation acts imposing taxes for a period that has expired at the time of the enactment of the statute.

Untermeyer vs. Anderson,
276 U. S. 440, 447; 72 L. ed. 645; 48 S. Ct. Rep. 353.

Wagner vs. Leser,
239 U. S. 207; 60 L. ed. 230; 36 S. Ct. Rep. 66.

Seattle vs. Kelleher,
195 U. S. 351; 49 L. ed. 233; 25 S. Ct. Rep. 44.

The 1935 tax was not levied until September, 1935, six months before the passage of the Act of March 20, 1936, and the 1936 tax was not levied until September, 1936, six months after the passage of the Act of March 20, 1936. It seems highly inconsistent to say that Congress cannot make the withdrawal of its consent to a tax levy extend back for the same period that it can extend back its tax levy.

4. *The Act of March 20, 1936, is in effect the withdrawal of a right to collect taxes from Reconstruction Finance Corporation, a wholly owned government instrumentality. Such right of withdrawal of collection is the equivalent of withdrawal of consent to sue the United States.*

Of course, the bank is subject to suit under 12 U. S. Code Ann., Sec. 24, and the bank may be sued by each of the respective counties to collect the taxes claimed on its shares.

Brophy vs. Powell,
121 Pac. (2) 647, 654 (Ariz.).

A general power to sue and be sued was granted to Reconstruction Finance Corporation by 15 U. S. Code Ann., Sec. 604, but this general power was withdrawn so far as the collection of taxes on preferred shares of banks were concerned by the Act of March 20, 1936.

12 U.S. Code Ann., Sec. 51d.

In Lynch vs. United States, 292 U. S. 571; 78 L. ed. 1434, 1442; 54 S. Ct. Rep. 840, it was held that an act which in general terms repealed both the substantive rights of the beneficiaries of veterans' insurance policies and the right to sue thereon was directed primarily at the substantive right and not the right to sue, and hence it was held invalid, although, if it had been directed at the right to sue, it would have been held valid. The court expressly states:

> "Although consent to sue was thus given when the policy was issued Congress retained power to withdraw the consent at any time. For consent to sue the United States is a privilege accorded; not the grant of a property right protected by the Fifth Amendment. The consent may be withdrawn although given after much deliberation and for a pecuniary consideration."

It was held in United States vs. Alabama, 313 U. S. 274; 85 L. ed. 1327; 61 S. Ct. Rep. 1011, that a proceeding to collect a tax is a suit and that such a suit or proceeding cannot be maintained unless the United States has consented that it may be. The Act of March 20, 1936, does not, like the act construed in Lynch vs. United States, supra, take away a contractual right. It merely provides that preferred shares of national banks owned by Reconstruction Finance Corporation

shall not be subject to the taxing process of the states or their subdivisions whether such taxes have been or shall thereafter be levied. It seems to us that this is equivalent to a declaration that there shall be no tax proceedings on these shares of stock against the Reconstruction Finance Corporation. That such an agency may be clothed with the immunity of the government from suit is settled.

The result is that if appellants are permitted to collect the tax on the Reconstruction Finance Corporation preferred stock from appellee bank, the bank has no means of collecting the tax from Reconstruction Finance Corporation. It is settled that a bank can not be compelled to pay the taxes of its shareholders when it can not be reimbursed for the money paid.

Shainwald vs. First National Bank,
109 Pac. 257, 258 (Idaho).

Iowa Des Moines National Bank vs. Des Moines,
288 N. W. 409 (Ia.).

Rosenblatt vs. Johnston,
104 U. S. 462; 26 L. ed. 832.

Stapylton vs. Thaggard,
91 Fed. 93.

City of Boston vs. Beal,
51 Fed. 306.

Gibbons vs. White,
47 Ariz. 180; 54 Pac. (2) 555.

Andrew vs. Munn,
218 N. W. 526.

Public Nat. Bank of New York vs. Keating,
47 Fed. (2) 561, 562.

Cummings vs. National Bank,
101 U. S. 153, 157; 25 L. ed. 903.

Whitney National Bank vs. Parker,
41 Fed. 402.

5. The 1936 tax which is enjoined in case E-350 was not levied until after the Act of March 20, 1936, became effective and so can not possibly be held to have been a vested right when said act was passed.

The state provides that the lien shall attach on January 1st, but this lien is created merely for the purpose of defining the obligation between grantor and grantee.

United States vs. Alabama,
313 U. S. 274; 85 L. ed. 1327; 61 S. Ct. Rep. 1011.

The obligation to pay the tax is not perfected until it is levied.

New York vs. Maclay,
288 U. S. 290; 77 L. ed. 754; 53 S. Ct. Rep. 323.

See to the same effect:

Territory vs. Perrin,
9 Ariz. 316; 83 Pac. 361.

United States vs. Certain Lands in St. Louis,
29 Fed. Supp. 92, 95.

United States vs. Pierce County,
193 Fed. 529, 532.

Bannon vs. Burns,
39 Fed. 892, 898.

United States vs. Buffalo,
54 Fed. (2) 471, 473.

Gilmor vs. Dale,
75 Pac. 932.

Portland vs. Multnomah County,
296 Pac. 48, 49 (Ore.).

State vs. Snohomish County,
128 Pac. 667, 669 (Wash.).

City & County of Denver vs. Tax Research Bureau,
71 Pac. (2) 809, 811 (Colo.).

Appellants suggest that since it does not appear that the shareholder owned real property in the county, the taxes were collectible before the rate for the year 1936 was fixed. This is provided for by Sec. 73-410 Ariz. Ann. Code 1939, but such collection can take place only upon the assessment of the property. By Sec. 3074, Revised Code of 1928, the assessment may be made between the first Monday in January and the first day of May. There is no suggestion that the assessment in question was made before March 20th, the date of the passage of the Act of Congress. In fact, it appears from the amended complaint that the taxes were not assessed under this provision of the law, but under Sections 3096-3098, Revised Code of 1928. (R. 116, 121, 302, 304.)

It is thus clear in case No. E-350 that the 1936 taxes had not been assessed or levied when the Act of March 20, 1936, was passed.

CONCLUSION

In conclusion, we submit that Congress, by the enactment of the Reconstruction Finance Corporation Act, made extensive provisions to aid the states and their subdivisions to overcome the depression. These provisions were gratuities from the federal government to the states and their subdivisions, to meet a need which the local governments were unable to assume alone. Not the least of these beneficial provisions was the act authorizing the rehabilitation of banks by purchase of their preferred stock and debentures. In the enactment of this statute, Congress

overlooked the fact that the manner in which it rendered this aid subjected the donation to liability for state and local taxes by way of an unintended exception to the general principles of exemption of Reconstruction Finance Corporation from such taxation as written into the act. The rate of such taxation in the appellant counties was higher than the dividend rate Congress reserved for Reconstruction Finance Corporation. Consequently, the permission of such taxation might very well take up the entire earnings of the capital contributed for the preferred stock and destroy the whole purpose of the beneficent Act of Congress. Promptly after the error was pointed out by the Supreme Court, Congress corrected the same by the Act of March 20, 1936, and the great majority of the states and their subdivisions promptly recogniged the correction. A few resisted, but in those cases the courts upheld the corrective act. These appellants originally did not deny the validity of that act; they first sought to avoid its effect by denying its application (R. 154-155, 172-173), and now, on this appeal, are so reluctant to release their tentative grip upon the forced gift that they change their position to deny the power of the giver to limit the effect of his own gift. We submit the decision of the Circuit Court of Appeals should be affirmed.

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Appendix Follows

APPENDIX

Extract from the opinion of Judge Offutt in the case of State Tax Commission vs. Baltimore National Bank, 199 Atl. 127-128.

"As pointed out in State Tax Commission vs. Baltimore National Bank, 169 Md. 65, 77, 180 A. 260, the Finance Corporation may become, in a way, a partner in a business which it aids, and may share in the profits thereof. But those are mere incidents of its primary purpose and function which was to rehabilitate institutions which either had collapsed, or which without such aid would have collapsed, by granting credit and aid when all other sources of credit had dried up and there was no other aid.

"Mr. Jesse H. Jones, chairman of the corporation, in a statement in evidence under a stipulation, said that when the act was passed, out of a total of 24,600 banks in operation in 1930, 5,500 having deposits of three and a half billion dollars had been forced to suspend even before the bank holiday, and that after the holiday four billion dollars of additional deposits were tied up in nearly 4,200 unlicensed or restricted banks that had been open before the holiday but not thereafter. Depositors fearful for the safety of their funds steadily withdrew their deposits, the deposits of member banks of the Federal Reserve System declined by approximately seven billion dollars, many communities were without banking facilities, private lenders were unable or unwilling to supply additional capital to the banks, and the banks in turn were unable to supply the 'essential credit needs of business and industry which suffered accordingly.' Bank failures and suspensions were increasing, many states declared bank holidays, even the strongest banks were in danger, and the entire banking system of the nation was facing collapse.

"Whatever may be said of the danger that the swift currents of the ever-widening whirlpool of federal activities will carry beyond the taxing power of the states so much property as to threaten the very existence of our dual form of government, it cannot be denied that the primary and essential duty of the national government in that crisis was to prevent, if possible, the complete collapse of the nation's credit, irreparable damage to its commerce and industry, and the chaos and disorder which were likely to follow. Nor can it be denied that the Reconstruction Finance Corporation as the agency employed to grant that aid was an essential instrumentality of the national government created and existing to perform a governmental function of the highest possible importance. Every reason advanced by the courts in support of the immunity of national banks, and the Federal Reserve Bank from state taxation, applies with at least equal force to the Finance Corporation. Neither performs a function more immediately essential to the continuance and integrity of the national government, while on the other hand both are operated for private profit, and the stock of both is owned in part by private investors. Nor is there rational support for the theory that the use of the nation's resources to avert a common national disaster is beyond the natural and legitimate scope of the powers granted to the national government 'in order to form a more perfect Union, establish justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare.'"

PURPOSE OF ACT OF CONGRESS MARCH 20, 1936

The Bill which culminated in the Act of March 20, 1926, came bofer the Congress under unanimous favorable reportf rom the appropriate Committee of each House. (Congressional Record, Vol. 80, pages 3965 and 4046.)

The measure was at all times treated as a remedial one for the avowed purpose of closing "an unintended legislative gap." This was taken for granted in the Senate and was soon made clear to the membership of the House by the leading members of the Committee on Currency and Banking. The statements to this effect in the record are so numerous that it would be exceeding tiresome to catalogue them.

On March 19, 1936, the day on which the curative measure was enacted by Congress and the day before it was approved by the President, Mr. Hancock of North Carolina said, in explaining the object and purpose of the law, the following:

> "This bill is sound, meritorious, and in the public interest. Its passage will merely restore to the Reconstruction Finance Corporation, an instrumentality of the Federal Government, its constitutional immunity from taxation, which immunity Congress unquestionably intended it should have at the time of the passage of the act in 1932. Its necessity arises as a result of a recent decision of the Supreme Court in the case of Baltimore National Bank against Maryland State Tax Commission, in which the Court held that Article X of the act specifically exempting the Corporation, its franchise, capital, reserves, surplus and income from taxation, both State and Federal, was not effective in the face of section 5219 of the Revised Statutes passed in 1864 which expressly authorizes States to tax national bank shares, within certain limitations, regardless of ownership. The immunity from taxation upon the passage of the bill applies to the R. F. C. alone because it is a Federal Agency. *The bill, therefore, does no more than to close an unintended legislative gap.* It will not in any way affect the rights of any State taxing authority or municipal authority to levy

taxes against the preferred stock, notes, or debentures held by any individual or other corporation." (Congressional Record, Vol. 80, page 4043.) (Italics supplied.)

On February 24, 1936, Senator Barkley, in explaining the object and purposes of the bill to the Senate, used these words:

"It is simply the correction of either an oversight, or lack of foresight, or lack of sufficiently broad language to cover what was sought to be covered. The Supreme Court said it was not covered and we are simply trying to correct the mistake."

On the same day Senator Adams said:

"The theory of the bill is to carry out the intent of Congress when the original banking act was enacted, that the stock held by the Reconstruction Finance Corporation should not be taxed. In no place, so far as I know, has there been payment of the tax." (Congressional Record, Vol. 80, page 2646.)

On the same day Senator Barkley made this further statement:

"It was thought that the Reconstruction Finance Corporation Act, which attempted to exempt from taxation this stock and the securities held by it, was broad enough to cover all sorts of securities it might hold including preferred stock in these banks. The Government made that contention in the lawsuit originating in Maryland and decided by the Supreme Court. The Court held that the language of the act was not broad enough to include this particular kind of security and therefore it was taxable. The bill is for the purpose of putting such securities on the same basis with any other securities held by the Reconstruction Finance

Corporation and all other governmental agencies like the land banks, the certain limitations, regardless of ownership." *Vol. 80 page 4043.*

Senator Robinson said:

"It occurs to me that the primary question to be solved in relation to this proposed amendment is, what was the original intention of Congress when, in order to save banks threatened with ruin, it authorized the Reconstruction Finance Corporation to purchase preferred stocks?

Of course, the Supreme Court has held, in the case referred to by the Senator from Michigan, that the language used in the act did not actually and legally relieve such preferred stocks from liability to tax by the States. That decision, of course, is conclusive and binding; but still the question arises as to what was actually the intention of the Congress. Did the Congress, at the time it authorized the Reconstruction Finance Corporation to purchase preferred stocks in banks for the purpose with which we are all more or less familiar, actually intend that such stocks should be subject to taxation by the States? If it did, the question as to whether this proposed legislation should be passed is different from that which arises in my mind if it is made clear that the original intention was to exempt such stocks from taxation. (Page 2648)

To my mind the answer to the whole argument is comprehended in the question I originally propounded, what was the actual intention of the Congress, taking into consideration the record that has been made and referred to here by the various Senators, and the further fact, which, in my judgment, is of itself controlling, namely, that the Reconstruction Finance Corporation was not created by the United States for the pur-

pose of making profit. It was created as an agency to save private industry and private organizations, so that it cannot be regarded as a profit-making organization, although I hope it will, at least in the long run, earn enough to offset such losses as may be made on the loans which have been negotiated.

If the Government did not intend when it created this corporation that its preferred stock should be taxed, if it placed that construction on it—and most of the States did the same thing—in my judgment the enactment of the proposed legislation is not only warranted, it is essential." (Congressional Record, Vol. 80 pages 2647 and 2649.)

Senator Barkley here interposed:

> "The Court's decision was based upon an old statute regulating national banks, a statute passed before the Reconstruction Finance Corporation was created, which, of course, gave consent of the Federal Government to the taxation of shares of national banks in the State. The Senator knows how impossible it is for us, in the passage of a new act, to specifically repeal or withdraw every exemption or every provision of an old act which may have been enacted before. There is no doubt but that when Congress passed the general legislation referred to by the Senator from New York, it intended that all of these securities, whatever was held by the Reconstruction Finance Corporation, outside of real estate, should be exempt from local taxation. The mere fact that the Court held that it was not broad enough or specific enough to do that it seems to me should not militate against the enactment of the pending bill correcting that, and making it specific in the law." Congressional Record Vol. 80, page 2649.

VII.

In the House Mr. Ford of California hit the nail on the head when he likened the situation of the Government allowing its own property to be taxed when in the hands of a concern which it had created to save the Country to the homely absurdity of allowing a man to punish a helpful stranger for saving him from destruction. He said the condition of affairs which would be left if Congress failed to make the correction and close the hiatus might well be compared to "*an old chap who owned a small ranch through which a stream ran, and he had signs all over it, 'No trespassing'; and one day he himself fell in and a stranger went in and rescued him, and then he turned around and had the stranger arrested for trespassing on his property.*" (Congressional Record, Vol. 80, page 3971.) (Italics supplied.")

Mr. Hollister without speaking a parable made the point equally vivid when he said:

> "Of course, if the bill is not passed, the States have the right under the decision of the Supreme Court in the Maryland case to tax preferred stock in national banks. The bill removes that right. But that is only a right which has existed since the Reconstruction Finance Corporation came into being. *There is no taking away any right which the State had before the Reconstruction Finance Corporation stepped into the picture.*" (Congressional Record, Vol. 80, page 4057.) (Italics supplied.)

Mr. Wolcott on the day before had already said this:

> "When we passed the original Reconstruction Finance Corporation Act, we exempted from local taxation their franchise, their own stock, their income, and everything except their holdings. I believe it was the intention of the Congress at that time to include the holdings of the Reconstruction Finance Corporation and, as I view this bill, it is merely an attempt on our part to clarify what was

very apparently our intention when the original Reconstruction Finance Corporation Act was passed." (Congressional Record, Vol. 80, page 3966.)

To go on would extend these quotations from the Congressional Record until they become tiresome. Congress was eagerly determined to promptly correct its inadvertent omission and exempt the preferred shares in national banks which the earlier act had failed to accomplish.

ARIZONA CONSTITUTION
ARTICLE 5

Sec. 1. (Executive officers.)—The executive department of the state shall consist of governer, secretary of state, state auditor, state treasurer, attorney-general, and superintendent of public instruction, each of whom shall hold his office for two years beginning on the first Monday of January next after his election, except that the terms of office of those elected at the election provided for in the Enabling Act approved June 20, 1910, shall begin when the state shall be admitted into the Union, and shall end on the first Monday in January, A. D. 1913, or when their successors are elected and qualified.

The persons, respectively, having the highest number of votes cast for the office voted for shall be elected; but if two or more persons shall have an equal and the highest number of votes for any one of said offices, the two houses of the legislature at its next regular session shall elect forthwith, by joint ballot, one of such persons for said office.

The officers of the executive department during their terms of office shall reside at the seat of government, where they shall keep their offices and the public records, books, and papers. They shall perform such duties as are prescribed by this constitution and as may be provided by law.

ARTICLE 12

Sec. 1. (Counties to be bodies politic.)—Each county of the state, now or hereaffer organized, shall be a body politic and corporate

ARIZONA ANNOTATED CODE OF 1939

Sec. 4-502. Duties.—The attorney-general shall:

1. Devote his entire time to the discharge of the duties of his office and not engage directly or indirectly in the private practice of law;

2. Appear in the Supreme Court and prosecute or defend all causes therein to which the state, or any officer thereof in his official capacity, is a party; and when required by the governor to appear for the state or any officer thereof, and prosecute or defend in any other court any cause wherein the state is a party or is interested;

3. Exercise supervisory powers over the county attorneys in all matters pertaining to their offices, and may require of them reports as to the condition of their public business; and may, when he deems the same necessary, and shall when directed by the governor, assist the county attorney of any county in the discharge of his duties;

4. Keep a docket of all causes in which he is required to appear, fully showing the condition of such cause, and the proceedings therein, and the proceedings subsequent to judgment, and the reasons for the delay of execution, if any, and keep a record of all money or property by him received, and disbursements made;

5. Give his opinion in writing to the legislature or either house thereof, to any state officer and to any county attorney, when required, upon any question of law relating to their offices;

6. Purchase in the name of the state and under the direction of the governor any property offered for sale under execution issued upon judgments in favor of or

for the use of the state, and to enter satisfaction in whole or in part, of such judgments, as the consideration for such purchases, and if the property of such judgment debtor has been sold under a prior judgment, or is subject to any prior judgment, lien or encumbrance, under the direction of the governor, to redeem such property from such prior judgment, lien or encumbrance; all sums of money necessary for such redemption must, upon the order of the governor, be paid out of any money appropriated for such purpose;

7. Perform such other duties as may be required by law, and report to the governor annually on or before the first day of January;

8. Appear for the state in any action in the courts of the United States, and the costs thereof and the expenses of the attorney-general incurred therein shall be a legal charge against the state; and

9. Institute investigation for the discovery of all property which may have or would escheat to the state, and for that purpose he may cite any person before the superior court to answer investigations, produce books and render accounts concerning said property, and institute action in the superior court of the county where the property is situate, for the recovery of escheats. He may require any county attorney to conduct any such proceedings.

Sec. 4-503. Legal advisor of departments.—The attorney-general shall be the legal advisor of all departments of the state, and shall give such legal service as such departments may require. With the exception of the industrial commission, no official, board, commission, or other agency of the state, other than the attorney-general, shall employ any attorney or make any expenditure or incur any indebtedness for legal services. The attorney-general may, when the business of the state requires, employ assistants.

Sec. 12-704. Salaries in first class counties—In counties of the first class, the county officers shall receive

the following annual salaries: Clerk of the superior court, Twenty-seven hundred dollars ($2,700); sheriff, four thousand dollars ($4,000); recorder, twenty-seven hundred dollars ($2,700); treasurer and ex officio tax collector, three thousand dollars ($3,000; county attorney, three thousand dollars ($3,000); assessor, twenty-seven hundred dollars ($2,700); superintendent of schools, twenty-four hundred dollars ($2,400) and actual and necessary traveling expenses not to exceed five hundred dollars ($500) per annum; chairman board of supervisors, fifteen hundred dollars ($1,500); members board of supervisors, twelve hundred dollars ($1,200) each. Each of said officers other than the board of supervisors and the superintendent of schools shall appoint one (1) chief deputy, to receive a salary agreed upon by the officer appointing the deputy and the board of supervisors, but not less than the following, nor in excess of twenty-five (25) per cent of the following: Deputy clerk of the superior court, eighteen hundred dollars ($1,800); deputy sheriff, twenty-one hundred dollars ($2,100); deputy recorder, eighteen hundred dollars ($1,800); deputy treasurer and ex officio tax collector, eighteen hundred dollars ($1,800); deputy county attorney, two thousand dollars ($2,000); deputy assessor, eighteen hundred dollars ($1,800); deputy superintendent of schools, eighteen hundred dollars ($1,800). The board of supervisors shall appoint a clerk, to receive an annual salary of twenty-four hundred (2,400) dollars. Members of the boards of supervisors in counties having a population of ninety thousand (90,000) or over shall receive each twenty-four hundred dollars ($2,400) per year; provided, however, that the chairman of said boards of supervisors shall each receive twenty-seven hundred dollars ($2,700) per year.

Sec. 12-709. Legal salary only to be received and in full, payable semi-monthly.—The salaries provided in this chapter shall be in full compensation for all services rendered by any officer, deputy or assistant.

Salaries shall be paid twice in each month on regular days not more than sixteen (16) days apart. All state or county officers, employees, members of boards and commissions not mentioned in this chapter, and all deputies, stenographers, clerks and employees of any officer, board or commission, or of any institution, shall receive the salary provided by the laws creating or authorizing their respective positions, and shall not, under any pretext, receive any salary or emolument in excess of the salary so provided by law.

Sec. 17-201. County a body corporate—Name of county, corporate name.—Every county is a body politic and corporate, and the name of the county designated in this chapter is its corporate name, by which it must be known and designated in all actions and proceedings.

Sec. 17-202. Powers—Its powers can be exercised only by the board of supervisors or by agents and officers acting under its authority and authority of law. It has the power to sue and be sued; to purchase and hold lands within its limits; to make such contracts and purchase and hold such personal property as may be necessary to the exercise of its powers; to make such orders for the disposition or use of its property as the interests of its inhabitants require, and to levy and collect such taxes for purposes under its exclusive jurisdiction as are authorized by law.

Sec. 17-203. Industrial pursuit—Election to determine bond issue.—The board of supervisors may, and upon petition for fifteen (15) per cent of the property taxpayers of the county, who are also qualified electors, shall call an election of such taxpayers to determine whether the bonds of said county shall be issued and sold for the purpose of constructing, installing and operating an industrial plant for the manufacture of ma-

terials or commodities for use in the construction of public highways or other public works of the county. Whenever the bonds of any county shall be authorized at said election and issued and sold, then said county shall have power to own or lease and operate the plants for which said bonds were so authorized, in any county of the state. Said election shall be called and conducted and the results returned and canvassed as in other county bond elections. The bonds shall be sold by the board in the same manner as other county bonds. The proceeds shall be placed in a special fund in the county treasury, as the "County Industrial Pursuits Fund" and shall be used only for the purposes for which said bonds were authorized.

Sec. 17-204. Construction and operation of plant.—When the proceeds of said bonds are in the treasury, the board of supervisors shall prepare plans and specifications for the plant and equipment, and thereupon shall advertise for bids for the construction and installation of said plant and equipment, in accordance with said plans and specifications by publishing a notice calling for bids thereon, for ten (10) days in a daily or two (2) weeks in a weekly newspaper. The contract shall be let to the lowest responsible bidder, who shall give security for the faithful performance of said contract, in such amount as the board determines; provided, said board may contract for any part of said work the cost of which does not exceed one thousand dollars ($1,000), without calling for bids. The board may reject any and all bids received and may readvertise.

Sec. 17-205. Engineer and manager.—The board may employ engineers and other employees to assist said board and to draft the plans and specifications, and shall employ a manager to have charge of the operation and maintenance of said plant to be skilled in the line of his duties and required to give bond for the faithful performance of his duties, in such amount as the board requires. Such manager and all engineers

and other employees necessary for the establishment and operation of such plant shall be paid salaries fixed by the board.

Sec. 17-206. Sale of products of plant.—The products of the plant shall be furnished to any board or officer of the county for the construction of any public improvement for the county, at a price based on the cost of manufacture including the taxes levied upon the bonded indebtedness; and such board or officer may purchase such products without advertisement for bids and pay for them out of the funds available for such county work. The products may also be sold, or exchanged for other materials required for public improvements, to other counties and persons; provided, that the price when sold for private purposes shall be the same to all persons for any given quantity, and not less than the price then charged the board or officer of the county.

Sec. 17-502. Enumeration of officers.—The officers of the county are: Sheriff, recorder, treasurer, school superintendent, county attorney, assessor, supervisors, clerk of the board of supervisors, tax collector, and clerk of the superior court. The county treasurer shall be ex officio tax collector.

Sec. 17-505. Terms of office—Treasurer succeeding himself.—County and precinct officers, for whose election and term of office no other provision is made, shall be elected at the general election, and shall hold office for the term of two (2) years from the first day of January next after their election. Only one (1) person shall be elected to any office to which are attached other offices ex officio. The treasurer shall not be elected to succeed himself for more than one (1) succeeding term.

XV.

Sec. 17-902. Duties.—The county attorney is the public prosecutor of the county and shall:

1. Attend the superior and other courts within the county, and conduct, on behalf of the state, all prosecutions for public offenses;

2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that such offenses have been committed; and, when not engaged in criminal proceedings in the superior court, attend upon the magistrates in cases of arrest, when required by them, and attend before, and give advice to, the grand jury;

3. Draw all indictments and informations, defend all actions brought against the county, prosecute all recognizances forfeited in the courts of record, and all actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or his county;

4. Deliver receipts for money or property received in his official capacity and file duplicates thereof with the clerk of the board of supervisors;

5. On the first Mondays of January, April, July and October in each year, file with the board of supervisors on account, verified by his oath, of all money received by him in his official capacity during the preceding three (3) months, and at the same time pay it over to the county treasurer;

6. Give, when required, his opinion, in writing, to county officers on matters relating to the duties of their offices;

7. Keep a register of official business, and enter therein every action, criminal or civil, prosecuted officially, and of the proceedings therein;

8. Act as the legal advisor to the board of supervisors, attend their meetings, and oppose claims against the county which he deems unjust or illegal; and,

9. Act as attorney for all school districts and the boards of trustees thereof.

Sec. 73-204. Assessment of property and shares of stock in corporations—Banking, building and loan associations or corporations, and finance corporations.—The property of corporations shall be assessed and taxed and no assessment shall be made of the shares of stock of corporations, nor shall any holder thereof be taxed for such shares. The foregoing provision shall not apply to a banking corporation, building and loan associations or corporations, and a corporation or association engaged in the business of using money wherewith to make money for the owners of its shares, the shares of stock of which shall be assessed and taxed as other property, in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of, and be payable by, such corporation or association.

Sec. 73-205. Statement to assessor by banking corporation and shareholders—Tax payable by corporation. Upon the demand of the assessor, the officers in charge of any such banking corporation or such corporation or association engaged in the business of using money wherewith to make money, shall make out and deliver to said assessor a sworn statement showing the number of shares, the name and residence of each shareholder, and the number of shares owned by him; the surplus, reserve fund, and undivided profits; and the par and marked value of the shares. The full cash value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return made to any officer of the state or the United States, from actual sales of the stock, or from other trustworthy sources. Every such shareholder shall, where such corporation or association is located, render at their full cash value to the assessor all shares owned by him therein, and if the

shareholder fail to do so, the assessor shall list and assess such unrendered shares as other unrendered property. The taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

Sec. 73-817. Purchase of property sold to state.—Whenever any real property shall be sold to the state as herein provided, the county treasurer shall sell, assign and deliver the certificate of purchase issued therefor to any person who shall pay to the county treasurer hte whole amount then due under such certificate, including interest, penalties and charges, and who shall in addition pay the whole amount of any subsequent taxes assessed on the real property described therein and the further sum of fifty cents (50c) for making each such assignment.

Sec. 73-838.—List of real estate held by state under tax deed—Notice of sale.—The board of supervisors, on or before the first Monday of November, in each year, shall prepare a list of the real estate within such county held by the state by tax deed, giving a full description of each tract, together with the name of the former owner thereof, if known, and the total amount of taxes, penalties, and costs, including the unpaid charges of the county treasurer and recorder, and shall advertise the same for sale at private sale at the office of the board. Such advertisement shall be by publication of said list and notice of sale in a newspaper published in the county, at least once a week for four (4) weeks, or oftener, if the board so directs; by posting in two (2) or more public places in each election precinct wherein any of said real estate is situated, and by keep-

ing such notice and list, as revised from time to time, continuously posted in the office of the board of supervisors, in the sheriff's office, and at the front door of the county court house.

Sec. 73-839. Sale of property held by state.—The board of supervisors may, after such advertisement, sell such real estate to the highest bidder for cash, and upon such sale shall execute and deliver to the purchaser, at his cost, a deed conveying to him the title of the state in and to the tract so purchased. The deed shall be acknowledged by the chairman and clerk of the board. The purchase money shall be paid to the county treasurer, who shall distribute and credit the same to the several funds entitled thereto. Should any such real estate be not sold before the time for the next succeeding publication thereof, the board may omit the same therefrom.

FILE COPY

JAN 30 1943

No. 449

In the Supreme Court of the United States

OCTOBER TERM, 1942

MARICOPA COUNTY, ARIZONA, ET AL., PETITIONERS

v.

THE VALLEY NATIONAL BANK OF PHOENIX, A CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AMICUS CURIAE

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 449

MARICOPA COUNTY, ARIZONA, ET AL., PETITIONERS

v.

THE VALLEY NATIONAL BANK OF PHOENIX, A CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AMICUS CURIAE

OPINION BELOW

The District Court made findings of fact and conclusions of law (R. 202–263, 270–330) but wrote no opinion. The opinion of the Circuit Court of Appeals (R. 381–387) is reported in 130 F. (2d) 356.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on August 7, 1942 (R. 388). The petition for certiorari was filed on October 8,

1942, and granted on November 16, 1942. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Act of March 20, 1936, is unconstitutional under either the Fifth or Tenth Amendments, in that it exempts the Reconstruction Finance Corporation from the impact of local taxes which had already been assessed but not collected, where such local taxes had been levied pursuant to permission previously granted by Congress.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States:

ARTICLE I, Section 8.

The Congress shall have Power * * *

* * * * * *

Cl. 18. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

* * * * * *

AMENDMENT V:

* * * nor shall any person * * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT X:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Revised Statutes as amended:

SEC. 5219. The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may (1) tax said shares, * * *. (U. S. C., Title 12, Sec. 548.)

Reconstruction Finance Corporation Act, c. 8, 47 Stat. 5:

SEC. 10. * * * The corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. (U. S. C., Title 15, Sec. 610.)

Act of March 20, 1936, c. 160, 49 Stat. 1185:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sec-

tion 304 of the Act entitled "An Act to provide relief in the existing national emergency in banking and for other purposes", approved March 9, 1933, as amended, be further amended by adding at the end thereof the following:

"Notwithstanding any other provision of law or any privilege or consent to tax expressly or impliedly granted thereby, the shares of preferred stock of national banking associations, and the shares of preferred stock, capital notes, and debentures of State banks and trust companies, heretofore or hereafter acquired by Reconstruction Finance Corporation, and the dividends or interest derived therefrom by the Reconstruction Finance Corporation, shall not, so long as Reconstruction Finance Corporation shall continue to own the same, be subject to any taxation by the United States, by any Territory, dependency, or possession thereof, or the District of Columbia, or by any State, county, municipality, or local taxing authority, whether now, heretofore, or hereafter imposed, levied, or assessed, and whether for a past, present, or future taxing period." (U. S. C., Title 12, Sec. 51d.)

* * * * *

Arizona Code, 1939:

SEC. 73-204. *Assessment of property and shares of stock in corporations—Banking * * * and finance corporations.* The property of corporations shall be as-

sessed and taxed and no assessment shall be made of the shares of stock of corporations, nor shall any holder thereof be taxed for such shares. The foregoing provision shall not apply to a banking corporation, * * * the shares of stock of which shall be assessed and taxed as other property, in the name of the shareholders of the several shares thereof, to be entered and taxed in the name of, and be payable by, such corporation or association.

SEC. 73-205. *Statement to assessor by banking corporation and shareholders—Tax payable by corporation.* * * * The taxes due thereon shall be paid by such corporation or association, and shall be a lien against and assessed to such shares of stock, and no such corporation or association shall pay any dividends to any shareholder who is in default in the payment of taxes due on his shares, nor shall it permit the transfer on its books of any shares the owner of which is in default in the payment of his taxes on the same.

SEC. 73-506. *Lien for taxes—Liability of property—Homestead exempt.* Every tax levied under the authority of this chapter upon real or personal property shall be a lien upon the property assessed. The lien shall attach on the first Monday in January in each year, * * *

STATEMENT

Under Section 5219 of the Revised Statutes Congress consented, on certain conditions, to state

and local taxation of shares of stock in national banking associations. Until March 9, 1933, national banks had no power to issue preferred shares. By statute then enacted national banks were authorized to issue preferred stock and the Reconstruction Finance Corporation (referred to herein as the R. F. C.) was authorized to subscribe therefor. Act of March 9, 1933, c. 1, 48 Stat. 1, Title III, amended by Section 2 of the Act of March 24, 1933, c. 8, 48 Stat. 20. Under Section 10 of the Reconstruction Finance Corporation Act, it had been provided that "The corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation * * * except that any real property of the corporation shall be subject to * * * taxation * * *." On acquisition by the R. F. C. of preferred stock in national banks the question arose whether such preferred stock was subject to state and local taxation under the consent earlier given by Congress in Section 5219 of the Revised Statutes.

Under the Arizona statutes shares of stock in banking corporations are taxed. The tax is paid in the first instance by the bank, but it is entitled to reimbursement from the stockholder on whom the tax liability ultimately rests. Arizona Code, 1939, Secs. 73-204, 73-205. *Peoples Finance & Thrift Co.* v. *Pima Co.*, 44 Ariz. 440, 444, 449. The Arizona statutes further provide that a lien

for all taxes levied shall attach as of the first Monday in January of each year. Section 73–506. Assessments of personal property are made by the county assessor between the first Monday in January and the first Monday of May of each year. Section 73–406. State and local taxes levied on the basis of this assessment are collected by the county treasurer as *ex officio* tax collector. Sections 73–605, 73–702.

The instant controversy involves two suits, No. 333 and No. 350, for injunctions against the collection of state and local taxes for the years 1935 and 1936, respectively, levied against national bank preferred stock owned by the R. F. C. The two cases were consolidated for trial and appeal (R. 188). The facts as found by the District Court may be briefly summarized as follows:

On February 11, 1935, the Valley National Bank of Phoenix (referred to herein as the bank) began to operate as a national banking association in several Arizona counties, including Maricopa and Pima Counties (R. 209). On that day it issued to the R. F. C. some 198,400 shares of preferred stock with a par value of $1,240,000 (R. 214–215). Thereafter in accordance with the requirements of Arizona law the bank furnished the counties' assessors with the names of its stockholders and the amounts of stock held by

each. Included was the preferred stock owned by the R. F. C. (R. 212, 215).

The county assessor for Maricopa County, for the tax year 1935, assessed the value of the bank's stock allocable to that county as $793,595.08. Of this sum $507,501 was the valuation placed on Maricopa County's proportion of the shares of preferred stock of the bank owned and held by the R. F. C. (R. 219–220). For the same tax year the assessment of the Pima County assessor against the bank was $327,590 and of this assessment only $139,088.80 was properly allocable to the bank's common stock. The difference, some $188,501.20, was assessed on account of valuations represented by the bank's preferred stock owned and held by the R. F. C. (R. 223).

After these assessments had been made the bank prosecuted timely appeals to the county boards of equalization and to the State Board of Equalization without securing any relief respecting the assessment of its preferred stock (R. 232–233). Thereafter the state, county, and other local tax bodies determined their respective tax rates necessary for the year. The county boards of supervisors then levied taxes against the bank in the sum of $49,810.86 for Maricopa County and $20,362.92 for Pima County, respectively (R. 234–235). The county treasurers acting as agents for the state, county, and other local bodies were required to collect one-half of this sum on or before

the first Monday in November 1935, and the other half in May 1936 (R. 235). Before November 4, 1935, the bank filed its original bill of complaint in the federal District Court for the District of Arizona in suit No. 333, praying for an injunction against collection of that portion of the 1935 taxes levied against its preferred stock owned by the R. F. C. on the ground that the Constitution and laws of the United States exempted such stock from the threatened tax. Reliance was placed as well on Section 2 of Article IX of the Arizona Constitution exempting federal property from taxation (R. 243–255).[1] Under a stipulation between parties whereby the portion of the tax concededly due on the bank's common stock was paid the case remained in abeyance on the District Court Docket until April 9, 1939 (R. 243–244).

During the pendency of this action this Court handed down its decision in *Baltimore Nat. Bank* v. *State Tax Comm'n*, 297 U. S. 209, holding that

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[1] Petitioner, Pima County, and its county officers moved this Court for leave to file a petition for a writ of mandamus to the judge of the federal District Court for the District of Arizona to compel the convening of a three-judge court pursuant to Section 266 of the Judicial Code. This Court denied the motion, *Ex Parte Bransford*, 310 U. S. 354, and stated at p. 358:

> If such assessments are invalid, it is because they levy taxes upon property withdrawn from taxation by federal law or in a manner forbidden by the National Banking Act. * * *

preferred national bank stock held by the R. F. C. was subject to state taxation by virtue of the consent given by Congress in Section 5219 of the Revised Statutes. The decision was rendered on February 3, 1936. On March 20, 1936, Congress enacted the statute, set out above, exempting shares of preferred bank stock owned by the R. F. C. from taxes "whether now, heretofore, or hereafter imposed, levied, or assessed, and whether for a past, present, or future taxing period."

In its final disposition of suit No. 333 the District Court ruled that at the time the complaint was filed the bank's remedy at law with respect to the taxes in question was inadequate. Accordingly and on the authority of the Act of March 20, 1936, a permanent injunction was issued against collection of that portion of the 1935 tax levied on the bank's preferred stock owned by the R. F. C.

Suit No. 350 involves taxes for the year 1936 (R. 267–269). Maricopa and Pima Counties again included substantial assessments against the bank's preferred stock owned by the R. F. C. (R. 301). Taxes thereon were levied after August 5, 1936 (R. 296–303, 325). Before these taxes became payable on November 2, 1936, the bank instituted this action to enjoin collection of that portion of the tax based on an assessment of the preferred stock. As in the consolidated suit involving 1935 taxes a permanent injunction against

collection of this portion of the tax was granted (R. 267–269, 331–333).

From the adverse judgments in the two suits Maricopa and Pima and their respective tax officials appealed (R. 334–338). As ground for reversal the appellants relied entirely on the asserted unconstitutionality under the Fifth and Tenth Amendments of the Constitution of application of the Act of March 20, 1936, to the 1935 and 1936 taxes (R. 346–357). The Circuit Court of Appeals held that the Act of March 20, 1936, by its terms applied to the taxes involved and that as so applied it was constitutional. The judgment of the District Court was affirmed (R. 381–388). This Court granted certiorari.

Pursuant to the Act of August 24, 1937, the case was certified to the Attorney General as involving the constitutionality of the Act of March 20, 1936. In response to that certification the United States submits this brief as *amicus curiae*.

SUMMARY OF ARGUMENT

I

A. Although petitioner-counties may properly assert the State's claim to protection under the Fifth Amendment in this suit, that amendment does not extend to the claims here asserted against the Federal Government by states or their political subdivisions. This is clear by reference to the genesis and history of the due process clause which is a direct inheritance from Magna Charta.

The protection there given was to "freemen" against oppressive acts of the Crown. In this tradition of protecting the rights of individuals, the Fifth Amendment was written into the Constitution. It was designed to protect the liberty and property of individuals from oppressive acts of the Federal Government. Wholly apart from the controverted question whether the due process clause was intended to protect corporate rights, it certainly was never designed to regulate the distribution of political power between the national government and the states.

B. In any event even if petitioners in asserting their present claim are properly within the protection of the Fifth Amendment, the Act of March 20, 1936, is valid. The power of Congress to immunize the property of federal agencies from state and local taxation extends to the property of the R. F. C. Unless there is some element of surprise and inequity in the Act its retrospective application is consistent with due process. In fact the counties at all times have been aware that the R. F. C. claimed immunity for the stock in question. Moreover, there was substantial basis for this claim. Thus when the 1935 taxes were levied thereon the counties were charged with knowledge of their doubtful validity. The Act of March 20, 1936, exempting from such taxation therefore involved no element of surprise. It was, rather, a curative statute designed to correct an inadvertent

legislative oversight. Enacted under circumstances giving rise to no substantial equities in the counties it is valid as applied to the 1935 taxes under prior decisions of this Court.

The 1936 taxes were levied after March 20, 1936, hence the Act applies prospectively with respect thereto. The prospective feature of the Act is clearly valid and separable from the retrospective feature.

II

The Act of March 20, 1936, invades no powers reserved to the states by the Tenth Amendment. The power to authorize or prohibit state taxation of securities held by the R. F. C. is vested exclusively in Congress by Article I, Section 8, of the Constitution. Cf. *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21. Hence, the power to tax the stock of national banks, and more particularly such stock owned by the R. F. C., was not constitutionally reserved to the states. The decisions of this Court make clear that the state can tax such stock only by virtue of Congressional consent. Retrospective withdrawal of that consent which is also within the power of Congress under Article I, Section 8, therefore, invades no powers reserved to the states by the Tenth Amendment.

ARGUMENT

INTRODUCTION

The Reconstruction Finance Corporation was created by Congress "to give relief to financial

and kindred institutions in a national emergency." Serving as a lending agency of the Federal Government, it sought to make available to banks and other financial institutions capital funds at the lowest appropriate rates. In all its functions "the purpose that it has aimed to serve is not profit to the government, though profit may at times result from one or more of its activities. The purpose to be served is the rehabilitation of finance and industry and commerce, threatened with prostration as the result of the great depression." *Baltimore Nat. Bank* v. *State Tax Comm'n*, 297 U. S. 209, 211. In 1933 the Corporation was authorized to furnish needed capital to certain types of banks by the outright purchase of preferred stock as well as by loans of various sorts.[2] In keeping with the purpose of its existence, it was authorized to act only when the need of banks for capital funds made its intervention necessary to safeguard and strengthen the banking system.[3] And, as in the case of its larger lending activities, its objective in purchasing preferred stock was exclusively to assist the banks. Thus, for example, it has from time to time consented to a reduction in dividend rates on the stock which it holds in order to accomplish

[2] Act of March 9, 1933, c. 1, 48 Stat. 1, 6, Title III, amended by Section 2, Act of March 24, 1933, c. 8, 48 Stat. 20.

[3] Id.

its purpose more effectively with a minimum burden on the banks.[1] Its origins, and the objects and characteristics of its operations, stamp the Corporation as an instrumentality of the United States performing governmental functions in substantially the same manner as other corporate arms of the Federal Government. Cf. *Baltimore Nat. Bank* v. *State Tax Comm'n*, 297 U. S. 209; *Langer* v. *United States*, 76 F. (2d) 817 (C. C. A. 8); and compare *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466; *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21; *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U. S. 95; *New Brunswick* v. *United States*, 276 U. S. 547; *Clallam County* v. *United States*, 263 U. S. 341.

As an instrumentality of the United States the Corporation stands on a parity with other branches of the Government and shares in their constitutional immunity from state taxation. Cf. *McCulloch* v. *Maryland*, 4 Wheat. 316, 421–422, 432; *Van Brocklin* v. *Tennessee*, 117 U. S. 151, 158–159; *South Carolina* v. *United States*, 199 U. S. 437, 451–452; *New Brunswick* v. *United States*, *supra*; *Clallam County* v. *United States*, *supra*; *Standard Oil Co.* v. *Johnson*, 316 U. S. 481. Whatever question there may be as to the Corporation's immunity from such taxation with respect to its holdings of securities in the absence

[1] Hearings on H. R. 11047 before House Committee on Banking and Currency, 74th Cong., 2d Sess., p. 7.

of any congressional expression on the matter,[5] it is clear that the Constitution vests in Congress the authority so to protect the Corporation if it chooses. *Pittman* v. *Home Owners' Loan Corp.*, 308 U. S. 21; *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U. S. 95. And in accordance with its authority in this respect, Congress explicitly forbade state taxation of "the corporation, including its franchise, * * * capital, reserves, and surplus, and its income" (Section 10, Reconstruction Finance Corporation Act, *supra*, p. 3).

Although the tax here involved is formally collected from the bank, in fact, and in legal contemplation, the exaction is imposed on the holder

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[5] Cf. *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 477. Although it is not necessary in this case to explore the boundaries of the constitutional immunity, it should be noted that the state tax here does more than merely "impose a burden on the national government tantamount to an interference by one government with the other in the performance of its functions" (p. 481). In furtherance of its purpose the Reconstruction Finance Corporation has kept its charges for making capital funds available at the lowest rate consistent with sound financing, thus leaving for itself a very small margin to cover operating expenses and individual losses. "Taxation of the preferred shares * * * of banks held by the Reconstruction Finance Corporation will not only encroach in all cases upon the small margin between the cost to the Reconstruction Finance Corporation of its money and the return on its investment in banks, but in many cases it will wipe this margin out entirely, impeding the Corporation's operations and leaving it perhaps with an actual substantial loss" (H. Rept. No. 1995, 74th Cong., 2d Sess., p. 2; S. Rept. No. 1545, 74th Cong., 2d Sess). Accordingly, taxes of the sort here involved interfere substantially with the

of its stock, in this case the R. F. C. By Revised Statutes, Section 5219, Congress explicitly delegated to the states the authority to tax shares of national bank stock in the hands of their holders. There is no need to decide here whether, in the absence of that authorization, the shares would have been taxable in the hands of any private holders. Cf. *Owensboro National Bank* v. *Owensboro*, 173 U. S. 664; *Bank of California* v. *Richardson*, 248 U. S. 476; *First National Bank* v. *Adams*, 258 U. S. 362; *Des Moines Bank* v. *Fairweather*, 263 U. S. 103. It suffices that, as a result of that authorization, state taxation of these shares in the hands of the Reconstruction Finance Corporation was upheld, *Baltimore Nat. Bank* v. *Tax Comm'n, supra*, and the supervening immunity which the Reconstruction Finance Corporation was given by Section 10 of its Act was rendered ineffective to protect the Corporation from taxes on its holdings of national bank stock. Since Congress could have constitutionally prohibited state taxation of the shares held by the R. F. C. (cf. *Pittman* v. *Home Owners' Loan Corp., supra; Federal Land Bank* v. *Bismarck Lumber Co., supra*), it is clear that to the extent

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R. F. C.'s functions. If the immunity exists at all in the absence of an explicit congressional declaration, the circumstances of this case would call it into play. Compare *Clallam County* v. *United States, supra; New Brunswick* v. *United States, supra*, and cf. *James* v. *Dravo Contracting Co.*, 302 U. S. 134.

that Revised Statutes, Section 5219, authorized such taxation, political power was gratuitously delegated to the states. Until the *Baltimore National Bank* case neither Congress[6] nor those charged with administering the affairs of the Reconstruction Finance Corporation[7] had understood Revised Statutes, Section 5219, when read in the light of Section 10 of the Reconstruction Finance Corporation Act, to authorize state taxation of the Corporation's holdings of national bank stock. Immediately after the *Baltimore National Bank* decision congressional intention in the matter was clarified by the passage of the Act of March 20, 1936, which not only immunized the Corporation from such taxation in the future but retroactively withdrew the authority held to have been given to the states in the past.

Petitioners, although conceding the validity of the prospective operation of the Act of March 20, 1936, contend that both the Fifth Amendment and

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[6] See H. Rept. No. 1995, 74th Cong., 2d sess., p. 2; S. Rept. No. 1545, 74th Cong., 2d sess.)

[7] See H. Rept. No. 1995, 74th Cong., 2d sess., p 2; Supp. 471 (W. D. Ky.), see also H. Rept. No. 2199, 74th Cong., 2d Sess. From the outset local authorities were apprised of this position (R. 232–233, 255) and several courts accorded validity to the Reconstruction Finance Corporation's contention that the preferred national bank stock which it owned was not taxable. See *In re Opinion of the Justices*, 133 Me. 521; *National Bank of Detroit* v. *Detroit*, 272 Mich. 610; *United States* v. *Lewis*, 10. F. Many states acquiesced in the Reconstruction Finance Corporation's claim in this matter and exempted from taxation its holdings in national bank stock.

the Tenth Amendment to the Constitution prevent Congress from narrowing the scope of the privilege which it had granted to the states by R. S. 5219 after the states have attempted to exercise it. We submit that neither contention can be sustained.

I. The Act of March 20, 1936, Does Not Violate Any Right Guaranteed to Petitioners by the Fifth Amendment

Petitioners contend that the Act of March 20, 1936 does not comply with the requirements of due process of law embodied in the Fifth Amendment. Before discussing the validity of this contention, however, it is necessary to determine whether those requirements measure the scope of permissible congressional action with respect to the delegation to, and withdrawal from, the states of the power to tax federal instrumentalities.[8]

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[8] Petitioners in assessing and attempting to collect the taxes here in question are asserting the authority of the State of Arizona. The character of petitioner counties as political subdivisions of the state [cf. Arizona Code, 1939, Secs. 17-202, 73-204 *et seq.* See also *City of Bisbee* v. *Cochise County*, 52 Ariz. 1, 78 P. (2d) 982; *Hartford Accident, etc., Co.* v. *Wainscott*, 41 Ariz. 439, 445-446, 19 P. (2d) 328], when considered in conjunction with the nature of the taxes here involved [some of the instant taxes are destined directly for the state, the county officer acting merely as a collection agent (R. 233-235, 300, 302-303) in accordance with the provisions of the Arizona statutes (Arizona Code, 1939, Secs. 73-701, 73-702], leaves little doubt that petitioners are properly in the position to assert that authority

We contend that in asserting their present claim, petitioners do not come within the protection of the Fifth Amendment and that in any event, the Act of March 20, 1936, does not conflict with the requirements of due process of law.

A. THE FIFTH AMENDMENT DOES NOT PROTECT THE INTEREST WHICH A STATE HAS IN COLLECTING TAXES WHICH IT HAS ASSESSED ON FEDERAL INSTRUMENTALITIES

The due-process clause of the Fifth Amendment protects any "person" against deprivation of "life," "liberty," or "property" by the Federal Government without "due process of law." The language of the clause alone is of little assistance in determining whether petitioners are within its ambit in asserting their claim. The elusive content of such legal conceptions as "person" and "property" compels resort to the history, and examination of the context, of the due-process clause in resolving the present inquiry. *Parker* v. *Brown*, No. 46, this Term, decided January 4, 1943.

The guarantee thus embodied in the Fifth Amendment traces its origins to the 39th Section

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in this suit. Cf. *Spokane County* v. *United States*, 279 U. S. 80. Accordingly both their position as litigants and the defenses which are open to them in this case are to be measured on the premise that the State of Arizona is the active party.

Cf., e. g., *Georgia* v. *Evans*, 316 U. S. 159; *Ohio* v. *Helvering*, 292 U. S. 360.

of the Charter of King John.[10] In terms, that section alludes to the protection to be accorded to men, rather than to corporate or political entities, from arbitrary actions of the sovereign.[11] The fact that the "men" whom the Charter protected may well have enjoyed many powers akin to those now enjoyed by quasi-sovereign governmental subdivisions, and that protection in the enjoyment of

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[10] See *The Federalist*, No. 84; Story, *Constitution of the United States* (4th ed.), sec. 1789; Taylor, *The Origin and Growth of the American Constitution* (1911), chap. VIII; Corwin, *The "Higher Law" Background of American Constitutional Law*, 42 Harv. L. Rev. 149, 365; see also *Murray's Lessee* v. *Hoboken Land and Improvement Co.*, 18 How. 272; *Matlox* v. *United States*, 156 U. S. 237; *Davidson* v. *New Orleans*, 96 U. S. 97, 101.

[11] In Cooley's *Constitutional Limitations* (8th ed.), Vol. 2, it is stated (p. 733):

> The chapter, as it stood in the original charter of John, was: "Ne corpus liberi hominis capiatur nec imprisonetur nec dissesisietur nec utlagetur nec exuletur, nec aliquo modo destruator, nec rex eat vel mittat super eum vi, nisi per judicium parium suorum, vel per legem terrae." No freeman shall be taken or imprisoned or dissessed or outlawed or banished, or any ways destroyed; nor will the king pass upon him, or commit him to prison, unless by the judgment of his peers, or the law of the land. In the charter of Henry III. it was varied slightly, as follows: "Nullus liber homo capiatur vel imprisonetur, aut dissesisietur de libero tenemento suo vel libertatibus vel liberis consuetudinibus suis, aut utlagetur aut exuletur, aut aliquo modo destruatur, nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terrae."

those powers was sought,[12] is of little significance in the present inquiry. The subsequent development in England of the conceptions embodied in this provision discloses a tendency to apply its limitations to the protection of the property and liberty of private citizens in their relations with the sovereign.[13]

On this continent the derivative of the 39th Section, as it appeared in state constitutions contemporaneously with the American Revolution, was clearly addressed to the relationship between the sovereign and private citizens in the exercise of their ordinary civil and property rights.[14] And the

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[12] See e. g., Adams, *Origin of the English Constitution* (1912), 242–244; Radin, *Anglo-American Legal History* (1936), secs. 98, 100, 104, 106; McIlwain, *Due Process of Law in Magna Carta*, 14 Columbia L. Rev. 27.

[13] See, e. g., Coke's *Institutes* (E. Brooke Ed.; London 1797), 45–46, 50–57. In Book IV of Blackstone's *Commentaries* at p. 424 (IV Lewis Ed. (1900) at p. 1786) it is stated with reference to the Magna Charta:

> And lastly (it alone would have merited the title that it bears of the *great* charter) it protected every individual of the nation in the free enjoyment of his life, his liberty, and his property, unless declared to be forfeited by judgment of his peers, or the law of the land.

compare Book I of Blackstone's *Commentaries*, pp. 121–145 (I Lewis Ed. (1900) at pp. 107–133).
See also Adams, *Origin of the English Constitution* (1912), 252–253; Taylor, *The Origin and Growth of the American Constitution* (1911), 75–83.

[14] See e. g., Constitutions of Connecticut, Maryland, North Carolina, Pennsylvania, and Virginia (adopted in 1776), Vermont (adopted in 1779), South Carolina (adopted in 1778), and Massachusetts (adopted in 1780) all quoted in Taylor *supra*, at pages 76–77.

language of a similar provision in the Northwest Ordinance of 1787 leaves no doubt that the civil liberties and property rights of the individual were the exclusive objects of its protection.[15]

While the conditions which led to the creation of the Federal Constitution[16] and the discussions attending its formation[17] suggest that its creators were largely concerned with other problems than the preservation of the liberties of individual citizens, the context in which the Fifth Amendment made its appearance points exclusively to the protection of the private person from arbitrary action by the sovereign. As contemporary discussions,[18] the proceedings in the various state conventions,[19] and Madison's remarks on intro-

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[15] Article II of the Northwest Ordinance, in a provision strikingly like the Fifth Amendment, contained a clause providing that: "* * * No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land * * *."

[16] See e. g., generally Beard and Beard, I *The Rise of American Civilization;* Warren, *The Making of the Constitution* (1937) 3–55.

[17] See generally Farrand, *Records of the Federal Convention of 1787* (1911); Warren, *The Making of the Constitution:* cf. 1 Parrington, *Main Currents of American Thought.*

[18] See e. g., *The Federalist*, No. 84; Letter of Richard Henry Lee to Governor Randolph of Virginia, quoted in Warren, *Congress, the Constitution and the Supreme Court* (1935), 79 n. 2; II Jefferson's works (Ford. Ed.) 329.

[19] See II *Elliot's Debates*, 418–434; II *Elliot's Debates*, 410; I *Elliot's Debates*, 334–337; III *Elliot's Debates*, 317, 442;

ducing the proposed amendments to Congress [20] make clear, one of the pervasive sources of dissatisfaction with the Constitution as submitted to the states for ratification was its failure to include a "Bill of Rights" which would protect the individual citizen against the Federal Government. That there was unquestionably current during the period of ratification a concern for the additional protection of state authority against encroachments by the new national government cannot be denied. But the significant point is that the Fifth Amendment was a portion of what was styled by contemporaries a "Bill of Rights." [21] And that

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446–449, 461, 593–594; and cf. the documents evidencing the ratification of the Constitution by the States of Massachusetts, Virginia, and New Hampshire collected in H. Doc. No. 398, 69th Cong., 1st Sess. (1927) 1027–1034, 1018–1020, and 1024–1026; see 2 Thorpe *Constitutional History of the United States* (1901) ch. II–V.

[20] See 1 Annals of Cong. 433 *et seq.*

[21] See e.g., *The Federalist* Nos. 43–46; Warren: *The Making of the Constitution*, 751 *et seq.*; and cf. the documents evidencing ratification by Virginia, Massachusetts, and New Hampshire, cited *supra*, note 19.

[22] See e. g., 1 Annals of Cong. 436; see Warren, *Congress, the Constitution, and the Supreme Court* (1935) 79–91. In introducing the proposed amendments to the Constitution to the first Congress, Madison treated as a unit what are now the first nine amendments. The other suggested amendments, including what is now the Tenth Amendment, were treated separately both by Madison and by the Congress. See e. g., 1 Annals of Cong. 434; 2 Thorpe, *Constitutional History of the United States* (1901), 200–211, 225–227, 257–258, 259–260

Bill of Rights was in no way addressed [23] nor understood by contemporaries [24] as addressed, to the relationship of the states to the nation. On the contrary it was universally recognized at the time of its adoption that the amendments embodied in it were, as a group, designed for the security of the individual against the Federal Government.[25]

Not only the historical frame of reference in which the Fifth Amendment arose, but the context of the due-process clause in the provisions of that amendment suggests that the individual person, rather than the political entity was the intended object of its protection. The due-process clause is part of a provision which deals with a prohibition against double jeopardy, with a requirement of presentment or indictment for crimes, and with a prohibition against compelling a person to testify against himself, all safeguards for individual persons. Any inference that the states,

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[23] See *supra*, notes 20, 22. The import of the Bill of Rights as a protection for the individual citizen rather than the state in its relationship with the Federal Government is suggested by the fact that Madison in introducing the Bill of Rights to Congress urged the wisdom of including in the Federal Constitution similar protections for the individual against the states, and proposed amendments to that effect. See 1 Annals of Cong. 441.

[24] For example, at no time in the discussion of the propositions embodied in the Bill of Rights was there the slightest allusion to those provisions as measuring rods either for the distribution of powers between nation and states, or for the protection of states in any of their activities. See 1 Annals of Cong. 424–450, 660–779, 71–88.

[25] See notes 20, 22, 23, *supra*.

even in their proprietary activities, were to come within its protection, is thus made difficult, if not negatived, by the context of the clause in the amendment. And the congressional debates, although silent on the due-process clause, indicate clearly that the provisions of the Fifth Amendment were understood in terms of the protection to be accorded the private person.[26]

In the light of this background, it is abundantly clear that the guarantees contained in the Fifth Amendment were not designed for the incidents of the relationship between the states and the Federal Government. Other provisions of the Constitution may affirmatively restrict federal power to curtail state authority,[27] and a more pervasive security for the states in this respect may be found in the fact that the Federal Government is one of delegated powers. But the Fifth Amendment has no relevance to the problem here presented. Whatever may be said of the controverted question whether private corporate rights are within the protection of the due process clause (cf. dissenting opinion in *Conn. General Co. v. Johnson*, 303 U. S. 77), it cannot seriously be thought the Fifth Amendment was designed to affect the distribution of political power between the states and the central government.

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[26] See 1 Annals of Cong. 753.

[27] Cf. Article I, Section 9, clause 5; cf. also Article IV, Section 4.

There can be little doubt that the power here sought to be exercised by Congress is within its constitutionally delegated authority. Complete discretion in immunizing federal instrumentalities from state taxation is vested in Congress by Article I, Section 8. Cf. *Pittman* v. *Home Owners Loan Corp., supra.* Congressional supremacy in this matter leaves no doubt as to the power to withdraw prospectively from the states authority theretofore delegated. Cf. *Williamson* v. *New Jersey,* 130 U. S. 189. And the necessity which is the source of this power to insulate federal instrumentalities from taxation, suggests no rational basis for distinguishing between prospective and retrospective protection for the operation of these agencies. The protection which their activities require is not less because the interference with them is partially consummated rather than wholly anticipated. Certainly in view of the knowledge on which Congress here acted (H. Rept. No. 1995, 74th Cong., 2d Sess., *infra,* Appendix, see also Sen. Rept. No. 1545, 74th Cong., 2d Sess.), retroactive protection is an "appropriate means", "adapted to the end to be accomplished, and which in the judgment of Congress will most advantageously effect it." *Legal Tender Case,* 110 U. S. 421, 440.

It should be noted that the federal authority, here asserted, does not involve any interference with the state's enjoyment of its "property", as

that term is traditionally used," or with the activities of the state in its proprietory capacity, cf. *Wyoming* v. *United States*, 255 U. S. 489, 509; *Wayne County, Kentucky* v. *United States*, 53 C. Cls. 417, affirmed *per curiam*, 252 U. S. 574; and compare *New York* v. *United States*, 257 U. S. 591, 601, or with any contractual relationship between the state and the United States. Cf. *Lynch* v. *United States*, 292 U. S. 571, 579. Although the history of the Fifth Amendment casts doubt on whether, even in those situations, its protection extends to the states, that question is not here involved. Nor is there any need to ascertain whether the powers delegated to Congress by the Constitution fall short of authority to interfere with otherwise legal proprietary in-

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* Thus, it is not even necessary to consider here whether, if the State had fully exercised the delegated power and reduced the fruits of its exercise to enjoyment, Congress could authorize the recovery of the sums collected. Cf. *Spokane County* v. *United States*, *supra*, note 8.

And it should be noted that, viewed against the larger background, the very funds which the State here seeks to tax are gratuities from the Federal Government. The acquisition by the R. F. C. of preferred stock in national banks represents the injection of new capital into the State when existing capital vanished in a great depression and private sources of capital were refusing and were unable to render aid. Not only is the taxable capital of a State unimpaired by the activities of the R. F. C. but, in preventing a vast number of inevitable bank failures, the Corporation made possible the preservation to the States of much taxable capital in the form of common stock, which would otherwise have vanished. See H. Rept. No. 2199, 74th Cong., 2d Sess.

terests of states. Cf. *New York* v. *United States*, 257 U. S. 591, 601. We are here concerned with the narrow question whether the stricture of the Fifth Amendment applies to the withdrawal from a state of a political power (to tax federal instrumentalities), over the disbursal of which Congress has unlimited discretion, after an attempt has been made to exercise it. We submit that it does not. Its context and history indicate that it was not designed to be invoked in such circumstances, and no decision of this Court has ever so applied it.

B. THE ACT OF MARCH 20, 1936, DOES NOT VIOLATE THE REQUIREMENTS OF DUE PROCESS OF LAW

Petitioners do not, and in the light of this Court's previous decisions cannot (e. g., *Pittman* v. *Home Owners' Loan Corp.*, *Federal Land Bank* v. *Bismarck Lumber Co.*, *supra*), question the authority of Congress prospectively to exempt national bank shares owned by the Reconstruction Finance Corporation from state and local taxation. Their complaint is limited to the provision of the Act of March 20, 1936, exempting the Reconstruction Finance Corporation from taxes "heretofore, * * * imposed, levied, or assessed." The 1935 taxes which the counties seek to collect were levied prior to November 2, 1935, and one-half thereof was payable on that date (R. 235). Thus it is clear that insofar as these taxes are concerned the Act of March 20, 1936, is applicable. We submit that, even if the protection

of the Fifth Amendment does extend to the interest of the state in the exercise of governmental power theretofore delegated, the requirements of that amendment are not infringed by the Act of March 20, 1936.

The Federal Constitution, unlike many state constitutions,[29] does not expressly prohibit retroactive legislation. Such limitations on congressional power in this respect as are here relevant[30] proceed from the requirement of the Fifth Amendment that no person shall be deprived of his life, liberty or property without due process of law. The question raised by petitioners, therefore, is whether Congress in seeking retroactively to narrow the scope of the authority which it had inadvertently delegated to the states is acting so unreasonably and capriciously as to violate the requirements of due process of law.

Since, at least with respect to the authority to tax securities held by the Reconstruction Finance Corporation, Congress by Revised Statutes, § 5219,

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[29] See 2 Cooley, *Constitutional Limitations* (8th ed.), p. 733, note 1; Black, *Constitutional Prohibitions* (1887), section 172; Smith, *Retroactive Laws and Vested Rights* (1927), 5 Texas Law Review 231, note 2.

[30] The only other limitation in this respect is contained in Article I, Section 9, cl. 3, which provides that "No Bill of Attainder or ex post facto Law shall be passed". This provision was held in *Calder* v. *Bull*, 3 Dall. 386 (accord *Locke* v. *New Orleans*, 4 Wall. 172; *Kentucky Union Co.* v. *Kentucky*, 219 U. S. 140) to apply only to criminal laws. Hence it cannot be invoked here.

gratuitously extended a privilege to the states (see *supra*, pp. 15–18), a relatively wide discretion in curtailing Section 5219 at any time may be urged. *Cf. United States* v. *Teller*, 107 U. S. 64, 68; *Frisbie* v. *United States*, 157 U. S. 160, 166; *Cummings* v. *Deutsche Bank*, 300 U. S. 115; *Lynch* v. *United States*, 292 U. S. 571, 577. Indeed the "congenital infirmity" which attaches to many types of contracts with the United States (*Norman* v. *Baltimore & Ohio R. R.*, 294 U. S. 240, 307–308) would seem even more clearly to characterize the bounty which the Government here bestowed upon the states. *Cf. Bridge Company* v. *United States*, 105 U. S. 470; *Salt Company* v. *East Saginaw*, 13 Wall. 373.

And where, as here, it is an overly broad grant of political authority which Congress is seeking to retract, even greater freedom may be urged. *Cf. Western Union Telegraph Co.* v. *Louisville & Nashville Railroad Co.*, 258 U. S. 13, 19–20. In disbursing and withdrawing authority to tax federal instrumentalities, Congress is not to be held to the standards which govern the reasonableness of legislation altering the relationships between private citizens in their dealings with each other (*cf., e. g., Ochoa* v. *Hernandez*, 230 U. S. 139) or between private citizens and the sovereign. (Cf. e. g., *Ettor* v. *City of Tacoma*, 228 U. S. 148.) *Cf. Williamson* v. *New Jersey*, 130 U. S. 189; and compare *City of Bisbee* v. *Cochise*

County, supra, note 8. The extent of immunity from state and local taxes to be given a federal agency directly involves a delicate adjustment of federal-state governmental relations in a field where the power of the Federal Government is concededly dominant. The very real concern of the Federal Government for state and local revenue evidenced not only by consent to taxation in many situations [31] but as well by grants-in-aid to the states [32] is a factor that argues for minimizing tax immunity. On the other hand the economical and proper functioning of federal agencies in many situations may require extensive immunity from state taxation. Therefore, to determine the appropriate scope of immunity, the impact on federal-state relations and the facts respecting the financial policies of the particular federal agency are among the factors that must be carefully considered. The wisdom of according unusual

[31] For example: real estate of Federal Reserve Banks is subject to state and local taxation. Act of December 23, 1913, c. 6, 38 Stat. 258, Sec. 7, as amended, U. S. C., Title 12, Sec. 531. Likewise, the real property acquired by the Home Owners' Loan Corporation is subject to state taxation. Act of June 27, 1934, c. 847, 48 Stat. 1252, Sec. 208, as amended, U. S. C., Title 12, Sec. 1714. Indeed the real property of the R. F. C. itself is made subject to state taxation by the very section of the statute which immunizes other R. F. C. activities, see *supra*, p. 3.

[32] For example, Highway Act, Act of November 9, 1921, c. 119, 42 Stat. 213, Sec. 6, as amended, U. S. C., Title 23, Sec. 6; Social Security Act, c. 531, 49 Stat. 620, Sec. 1, U. S. C., Title 42, Sec. 301.

weight to congressional determination of such purely governmental matters is self-evident. *Cf. Coleman* v. *Miller*, 307 U. S. 433, 454, *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U. S. 95, 104.

Moreover, equities such as "action in reliance" which might be invoked in the circumstances attending other instances of retroactive legislation are not present here. Before these taxes were assessed, local authority to do so was disputed.[33] From the outset the states, and petitioners here, were put on notice as to the contention of the Reconstruction Finance Corporation with respect to the taxability of the stock it held (see *supra*, pp. 9, 18), and many states acceded to the limitations thus asserted on their taxing power. Petitioners are thus in no position to claim "novelty and surprise" (*Swayne & Hoyt, Ltd.*, v. *United States*, 300 U. S. 297) [34] in the attempt of Congress now to reinforce legislatively the claim earlier made by agencies of the Federal Government under colorable authority (H. Rept. No. 1995, 74th Cong., 2d Sess.). On the contrary, it is petitioners who seek to take advantage of an

[33] The 1935 taxes here in question were levied prior to the decision of this Court in *Baltimore Nat. Bank* v. *State Tax Comm'n*, 297 U. S. 209, at a time when the taxability of this stock under the general consent statute was questioned.

[34] Compare *Nichols* v. *Coolidge*, 274 U. S. 531; *Coolidge* v. *Long*, 282 U. S. 582; *Helvering* v. *Helmholz*, 296 U. S. 93; *White* v. *Poor*, 296 U. S. 98.

unexpected hiatus in the law. Uniformly, until the *Baltimore National Bank* decision, the statutes had been construed by the Reconstruction Finance Corporation, by the courts, and by many states, to insulate the Corporation from state taxation of its holdings of bank stock. The present statute, therefore, enacted less than two months after the *Baltimore Bank* decision, is merely an attempt to "remedy mistakes and defects in the administration of government" which that decision pointed out.

In these circumstances, the retroactive provisions of the Act of March 20, 1936, are not so arbitrary or capricious as to violate the requirements of the Fifth Amendment. Retroactivity does not, itself, render legislation invalid, as innumerable instances of the retroactive application of revenue statutes bear out.[35] While on occasion attempts at retroactivity have been held invalid, in those instances there were present other elements which were thought to render the legislation arbitrary and capricious.[36] In considering legislation of this

[35] See e. g., *Stockdale* v. *Insurance Companies*, 20 Wall. 323; *Patton* v. *Brady*, 184 U. S. 608; *Billings* v. *United States*, 232 U. S. 261; *Flint* v. *Stone Tracy Co.*, 220 U. S. 107; *Milliken* v. *United States*, 283 U. S. 15; and see also *League* v. *Texas*, 184 U. S. 156.

[36] As the cases disclose, the objection to retroactivity stems primarily from the unforeseeable alteration it works in the rights of participants to already completed transactions. See, e. g., *Ochoa* v. *Hernandez*, *supra*; *Nichols* v. *Coolidge*, *supra*. By the statute in this case, however, unlike the legis-

character, as was pointed out in *Graham & Foster* v. *Goodcell*, 282 U. S. 409, 429, a distinction must be made "between a bare attempt of the legislature retroactively to create liabilities for transactions * * * fully consummated in the past * * * and the case of a curative statute aptly designed to remedy mistakes and defects in the administration of government where the remedy can be applied without injustice." By the Act of March 20, 1936, Congress attempted to cure an unforeseen, and arguably an unforeseeable, defect in legislation by retroactively applying a policy which at all times it had authority to invoke and which had been asserted against the petitioners under colorable authority at the time the tax here in question was assessed.[37] Legislation of this character does not exceed the limits of due process of law. *United States* v. *Heinszen & Co.*, 206 U. S. 370; *Rafferty* v. *Smith, Bell & Co.*, 257 U. S. 226; *Charlotte Harbor Railway Co.* v. *Welles*, 260 U. S. 8, 12; *McNair* v. *Knott*, 302 U. S. 369; *McFaddin* v. *Evans-Snider-Buel Co.*, 185 U. S. 505. Accordingly, the Act of March 20, 1936 is effective to prevent the collection of the taxes sought to be

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lation involved in most of those cases, "the legislature simply was establishing the situation as both parties knew from the beginning it ought to be." *Forbes Pioneer Boat Line* v. *Board of Commissioners*, 258 U. S. 338, 340.

[37] See S. Rept. No. 1545, 74th Cong., 2d Sess.; H. Rept. No. 2199, 74th Cong., 2d Sess.

levied against the Reconstruction Finance Corporation for 1935 and 1936.[28]

II. The Act of March 20, 1936, Does Not Deprive Petitioners of Any Rights Guaranteed to Them by the Tenth Amendment

Petitioners also urge that Congress, in seeking to prohibit the collection of taxes which were validly assessed, invades the powers reserved to the states by the Tenth Amendment to the Constitution. While they concede the propriety of any prospective withdrawal by Congress of delegated authority to tax instrumentalities of the United States, they contend that any retroactive destruc-

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[28] In any event it should be noted that with respect to the 1936 taxes the Act need not be applied retrospectively, for those taxes were levied after March 20, 1936 (R. 296–299, 300, 302–303, 325). The Counties rely on *United States* v. *Alabama*, 313 U. S. 274, for the proposition that the Act must be applied retrospectively with respect to the 1936 taxes because the statutory lien attaches as of the first Monday in January. Arizona Code, 1939, Sec. 73–506, set out above. The question in that case, however, was simply whether a tax lien attaching to property before purchase by the United States was divested by reason of the implied immunity of the property of the United States from state taxation. Here Congress has expressly withdrawn the property in question from taxation. Until the tax was levied, the lien was merely an inchoate one (*New York* v. *Maclay*, 288 U. S. 290), as this Court recognized in *United States* v. *Alabama*, *supra*. To relieve against a tax not yet levied cannot be regarded as retroactive legislation simply because an ancillary collection device exists prior to levy of the tax.

The validity of the prospective feature of the Act of March 20, 1936, is plainly separable from the retrospective

tion of the power thus granted impinges upon their constitutionally reserved authority.

As we have pointed out above, petitioners are properly in a position to claim whatever rights the state may claim under the Tenth Amendment.[39] (See *supra*, note 8.) But the tautology implicit in the Tenth Amendment—"that all is retained which has not been surrendered" (*United States* v. *Darby*, 312 U. S. 100, 124; *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 325; *Gordon* v. *United States*, 117 U. S. 697, 705; *United States* v. *The William*, 28 Fed. Cas. No. 16,700 (D. Mass.))—reduces the inquiry on this phase of the case to the question whether the Constitution otherwise authorized Congress to enact the Act of March 20, 1936. If it did, petitioners' defense under the

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feature. The Act itself contains a separability clause providing that (Sec. 3):

> If any provision, word, or phrase of this Act, or the application thereof to any condition or circumstance, is held invalid, the remainder of the Act, and the application of this Act to other conditions or circumstances, shall not be affected thereby. (U. S. C., Title 12, Sec. 51f.)

The spirit of the enactment requires recognition of its prospective validity apart from its retrospective features.

[39] The subject matter of the Tenth Amendment is the distribution of governmental powers between state and nation. Accordingly, even more clearly than with respect to the Fifth Amendment, the contentions of petitioners with respect to the Tenth Amendment must be understood as addressed not to any congressional extraction from the state of property which the latter owned, but to some alleged curtailment of governmental powers which the Constitution vested in the state.

Tenth Amendment must fall. We submit that it did.

By virtue of Article I, section 8, of the Constitution, Congress has the exclusive authority to determine whether and to what extent the Reconstruction Finance Corporation shall be immune from state taxation. See *Smith* v. *Kansas City Title and Trust Co.*, 255 U. S. 180; *Federal Land Bank* v. *Crosland*, 261 U. S. 374; *Pittman* v. *Home Owners Loan Corp.*, 308 U. S. 21; *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U. S. 95; *Pittman* v. *Home Owners Loan Corp.* 308 U. S. 21, 33. Accordingly, the authority under which the tax here in question was levied was not a power mechanically reserved to the states under the Tenth Amendment. Indeed, as the decision in *Baltimore Nat. Bank* v. *State Tax Comm'n, supra,* makes clear, the privilege to tax the R. F. C.'s holdings which the State possessed was conferred upon it by Congress. At best, therefore, unless Congress is impotent to withdraw that privilege, the Tenth Amendment affords no defense here.* As we have pointed out above, the power of Congress to protect the operations of Federal instrumen-

* Although the point must of necessity be academic, it should be noted that even if Congress were here impotent to withdraw the delegated authority, there would be a serious question whether the Tenth Amendment could be urged as an additional obstacle in this case in view of the fact that under the Constitution Congress alone is vested with the authority to prohibit state taxation of federal instrumentalities; i. e., since the power to tax the R. F. C.'s holdings was conferred upon the State by Congress, it is not a power *constitutionally* reserved to the State.

talities includes the authority to prohibit state taxation retroactively. See *supra*, pp. 26–27. The only other asserted ground of congressional impotence here is the Fifth Amendment. We have demonstrated, however, that that ground cannot be sustained.

Since Congress was thus authorized by Article I, Section 8, to pass the Act of March 20, 1936, and is not otherwise prohibited therefrom by the Constitution, none of the powers reserved to the states have been invaded.

CONCLUSION

The judgment of the Circuit Court of Appeals is correct and should be affirmed.

Respectfully submitted.

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JANUARY 1943.

APPENDIX

H. Rept. No. 1995, 74th Cong., 2d Sess., pp. 1–2:

The Reconstruction Finance Corporation was created by act of Congress on January 22, 1932, and was designed to give relief to financial and kindred institutions in a national emergency, in accordance with policies announced by Congress. In aid of its purposes, section 10 of the Reconstruction Finance Corporation Act provided that "the Corporation, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation", State or Federal. Section 10 has generally been understood to assert the broadest possible immunity from the burden of taxation for the Corporation, its assets and its operations. This construction follows from the language of the section which confers tax exemption upon "the Corporation", while specifically consenting to the taxation of real property alone. This construction follows also from the material impairment of the Corporation's operation and effectiveness by any burden of State and Federal taxation, for in furtherance of its purposes the corporation has kept its charges at the lowest rates consistent with sound financing.

By act of March 9, 1933, the Corporation was authorized to subscribe to the preferred stock, capital notes, and debentures of national banks and State banks and trust companies. No specific tax exemption was enacted at that time since it was

assumed that section 10 of the Reconstruction Finance Corporation Act was sufficient. This was the belief also of the many States that have never sought to tax the shares, notes, and debentures, and is specifically demonstrated by the opinions of the supreme courts of Maine and Michigan, and by the opinions of the attorneys general of many of the States. Moreover, some States which tax generally shares of bank stock have expressly exempted preferred shares, no matter by whom owned.

Consistent with the Corporation's policies and with the general purposes of congressional mandates governing its action, it has sought to make available capital funds at the lowest appropriate rates, which are 3½ percent until February 1, 1940, and 4 percent thereafter. The initial rate was 6 percent. Since the Corporation pays the Treasury 2¾ percent for the funds procured from it, the present rate is as low as is consistent with sound financing, leaving a very small margin to cover operating expenses and individual losses.

However, the United States Supreme Court, in an opinion handed down on February 3, 1936, in the case of the *Baltimore National Bank* v. *State Tax Commission of Maryland*, has held that the shares of preferred stock of national banks owned by the Corporation are subject to State taxation. The general consent, contained in Revised Statutes, section 5219, to the taxation of the capital stock of national banks, was held to prevail, notwithstanding the broad provisions of section 10 of the Reconstruction Finance Corporation Act.

This privilege to tax has certain unfortunate consequences when applied to activi-

ties of the Reconstruction Finance Corporation. Taxation of the preferred shares, notes, or debentures of banks held by the Reconstruction Finance Corporation will not only encroach in all cases upon the small margin between the cost to the Reconstruction Finance Corporation of its money and the return on its investments in banks, but in many cases it will wipe this margin out entirely, impeding the Corporation's operations and leaving it perhaps with an actual substantial loss. Moreover, some States do not impose any tax on stock, notes, or debentures of this nature; while the rates in others vary from a small fraction of 1 percent to a percentage which practically exhausts the entire return, bringing an inequality into the relationship of the Reconstruction Finance Corporation and the banks to which it is rendering assistance.

Although the opinion of the Supreme Court refers only to the preferred stock of national banks, it is deemed wise to extend the provisions of the proposed bill to cover Reconstruction Finance Corporation investments in State banks as well, so that there may be no question as to the intent of Congress.

The committee feels that when Congress enacted section 10 of the Reconstruction Finance Corporation Act, it was intended to give as wide immunity as possible to the functions and activities of the Corporation and the enactment of the proposed bill will accomplish that intention.

Similar statements are found in H. Rep. No. 2199, 74th Cong., 2d Sess.; and in S. Rep. No. 1545, 74th Cong., 2d Sess.

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SUPREME COURT OF THE UNITED STATES.

No. 449.—October Term, 1942.

Maricopa County, Arizona, W. H. Linville, as County Treasurer, and Ex-Officio Tax Collector of Maricopa County, et al., Petitioners,
vs.
The Valley National Bank of Phoenix.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[March 1, 1943.]

Mr. Justice Douglas delivered the opinion of the Court.

Petitioners are counties of the state of Arizona and certain county officers. Respondent is a national banking association incorporated under the laws of the United States and having its principal banking house at Phoenix, Maricopa County, Arizona. It sued petitioners[1] to restrain the collection of certain state, county, school district and municipal taxes for the years 1935 and 1936 and invoked the jurisdiction of the United States District Court for the District of Arizona under § 24(1)(a) of the Judicial Code, 28 U. S. C. § 41(1)(a).

Respondent has two classes of shares of capital stock outstanding—common and preferred. Prior to March 9, 1933, national banks were not authorized to issue preferred shares. On that day they were given such authority and the Reconstruction Finance Corporation was authorized to subscribe for such shares. Act of March 9, 1933, 48 Stat. 1, Title III, as amended by § 2 of the Act of March 24, 1933, 48 Stat. 20, 12 U. S. C. § 51a, § 51d. On February 11, 1935, respondent issued to the Reconstruction Finance Corporation some 198,400 shares of its preferred stock with a par value of $1,240,000. By § 5219 of the Revised Statutes, 12 U. S. C. § 548, Congress consented on certain conditions to state taxation of shares of stock of national banking associations. Arizona taxes shares of stock of banking corporations. The tax is paid in the first instance by the bank which is entitled to reimbursement from the shareholder on whom the tax liability ultimately rests. Ariz.

[1] For an earlier phase of this litigation see Ex parte Bransford, 310 U. S. 354.

Code (1939) § 73-204, § 73-205. The Arizona statutes also provide that a lien for all taxes levied shall attach as of the first Monday in January of each year on the property assessed. § 73-506. Assessments of personal property are made by the county assessor between the first Monday in January and the first day in May of each year. § 73-402. State and local taxes levied on the basis of this assessment are collected by the county treasurer as *ex officio* tax collector. § 73-605, § 73-702. Petitioners' assessments for 1935 included respondent's preferred shares owned and held by the Reconstruction Finance Corporation. On the basis of those assessments, taxes were levied in 1935 against respondent which thereupon filed its bill of complaint in the federal District Court. While the cause was pending this Court decided *Baltimore Nat. Bank* v. *State Tax Comm.*, 297 U. S. 209, which held that preferred shares of a national bank held by the Reconstruction Finance Corporation were subject to state taxation by reason of the consent given by Congress in § 5219 of the Revised Statutes. That decision was rendered on February 3, 1936. On March 20, 1936, Congress enacted a statute providing that shares of preferred stock of national banks "heretofore or hereafter acquired by" the Reconstruction Finance Corporation "shall not, so long as Reconstruction Finance Corporation shall continue to own the same, be subject to any taxation by the United States, by any Territory, dependency, or possession thereof, or the District of Columbia, or by any State, county, municipality, or local taxing authority, whether now, heretofore, or hereafter imposed, levied, or assessed, and whether for a past, present, or future taxing period." 49 Stat. 1185, 12 U. S. C. § 51d. On the authority of that Act, the District Court, after finding that respondent's remedy at law was inadequate, issued a permanent injunction against the collection by petitioners of that portion of the 1935 taxes levied on respondent's preferred stock owned by the Reconstruction Finance Corporation. A permanent injunction was also issued in a like cause of action based on taxes for the year 1936 which were levied after March 20, 1936. The judgments in the two suits were affirmed by the Circuit Court of Appeals. 120 F. 2d 356. The case is here on a petition for writ of certiorari which we granted because of the public importance of the questions raised. Pursuant to the Act of August 24, 1937, 50 Stat. 751, 28 U. S. C. § 401, the case was certified to the Attorney General as involving the

constitutionality of the Act of March 20, 1936. In response to that certification the United States submitted a brief as *amicus curiae*.

Petitioners contend that the Act of March 20, 1936, violates the Fifth and the Tenth Amendments. They further argue that the word "person" as used in the Fifth Amendment includes counties and states; and that they may raise the Tenth Amendment issue since they are asserting the authority of the State of Arizona in assessing and in attempting to collect the taxes in question. We need not decide the last two questions. For even if we assume, *arguendo*, that petitioners are right in those contentions, we are of the view that the judgment below must be affirmed.

Little need be said in answer to the argument that the Act violates the Tenth Amendment. The authority by which the taxes in question were levied did not stem from the powers "reserved to the States" under the Tenth Amendment. It was conferred by Congress which has under the Constitution exclusive authority to determine whether and to what extent its instrumentalities, such as the Reconstruction Finance Corporation, shall be immune from state taxation. *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180, 211-213; *Federal Land Bank* v. *Crosland*, 261 U. S. 374; *Pittman* v. *Home Owners Loan Corp.*, 308 U. S. 21, 33; *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U. S. 95. Hence when Congress withdrew the privilege which it had previously granted, it was not curtailing any political power which the Constitution had reserved to Arizona. See *Owensboro Nat. Bank* v. *Owensboro*, 173 U. S. 664; *Des Moines Nat. Bank* v. *Fairweather*, 263 U. S. 103, 106, and cases cited.

The argument that the Act of March 20, 1936, violates the Fifth Amendment is based on its retrospective feature. Petitioners contend that since the liens of the taxes were impressed before the effective date of the Act, they were property rights which Congress could not destroy. We need not consider the case where prior to the withdrawal of the privilege the tax had been collected or the tax lien foreclosed and the property reduced to the possession of the taxing authority. In the instant case the state taxing authorities are asserting rights which if recognized can be enforced by the maintenance of a suit to establish and foreclose a lien on property of a federal instrumentality, the Reconstruction Finance Corporation. Cf. *New York* v. *Maclay*, 288 U. S. 290. But even a "proceeding against property in which the United

States has an interest is a suit against the United States." *United States* v. *Alabama*, 313 U. S. 274, 282. No such suit may be maintained without the consent of the United States. Such consent, though previously granted, has now been withdrawn. And the power to withdraw the privilege of suing the United States or its instrumentalities knows no limitations. *Lynch* v. *United States*, 292 U. S. 571, 581-582, and cases cited. Nor did the prior grant of the privilege to tax the shares rise to a higher level than a gratuity or bounty. Nothing was given in exchange. Cf. *Christ Church* v. *Philadelphia Co.*, 24 How. 300, 302. When Congress authorized the states to impose such taxation, it did no more than gratuitously grant them political power which they theretofore lacked. Its sovereign power to revoke the grant remained unimpaired, the grant of the privilege being only a declaration of legislative policy changeable at will. Cf. *Dodge* v. *Board of Education*, 302 U. S. 74. Hence, as in the case of the recall of other gratuities (*Frisbie* v. *United States*, 157 U. S. 160, 166; *Cummings* v. *Deutsche Bank*, 300 U. S. 115, 122-124), the withdrawal of this privilege invaded no rights protected by the Fifth Amendment.

Affirmed.

Mr. Justice RUTLEDGE did not participate in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.